

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: POLICE

AGENDA DATE: February 22, 2005

CONTACT PERSON/PHONE: ASSISTANT CHIEF PAUL CROSS / 564-7310
Mr. Stuart C. Ed

DISTRICT(S) AFFECTED: All

SUBJECT:

That the Mayor and Council review and accept the El Paso Police Department's Contact Data (Racial Profiling) Annual Report covering the period of January 1, 2004 through December 31, 2004.

BACKGROUND / DISCUSSION:

Texas State law by authority of the Texas Racial Profiling Law, Code of Criminal Procedure, Art. 2.132-2.138, requires the Police Department to submit an annual report to the Department's governing body that contains data collected and analyzed as required by the statute. The Mayor and City Council have received this report annually from the Police Department since required by statute in March 2003.

PRIOR COUNCIL ACTION:

This report must be presented to City Council annually by the State of Texas. The last report to City Council was submitted and accepted by Council February 17, 2004.

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: _____

(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____

DATE: _____

**EI PASO POLICE DEPARTMENT
EL PASO, TEXAS**



POLICE CONTACT DATA

ANNUAL REPORT

January 1, 2004—December 31, 2004

I Introduction

a) Opening Statement Outlining Rationale and Objective of Report

February 10, 2005

Mayor and Council
City of El Paso
#2 Civic Center Plaza
El Paso, Texas 79901

Honorable Mayor and Council Members:

Profiling citizens based on race or ethnicity is prohibited and will never be considered an acceptable practice within the El Paso Police Department. Since January 1, 2002, the El Paso Police Department, in accordance with applicable Texas Statutes, has collected police contact data for the purpose of ensuring compliance with the law and preventing the practice of racial profiling. The findings provided in this report will serve as evidence that the El Paso Police Department does not violate racial profiling laws, but rather we strive towards maintaining strong relations with the community.

This report contains sections designed to provide background information on the rationale and objectives of the Texas Racial Profiling Law. Other sections contain policies and procedures intended to prohibit racial profiling that have been adopted by the El Paso Police Department.

The final segment of this report provides statistical data analyzing public contacts made by officers during the period of January 1 through December 31, 2004. The analysis of the data and recommendations for future areas of research are included. I sincerely hope that your review and acceptance of this report provides the assurance necessary to strengthen the bonds of the Department with the community we serve.

Sincerely,

Richard Wiles
Chief of Police

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c) The Texas Law on Racial Profiling

Texas Code of Criminal Procedure; Articles Relating to Racial Profiling

Art. 2.131. Racial Profiling Prohibited

A peace officer may not engage in racial profiling.

Added by Acts 2001, 77th Leg., ch. 947, § 1, eff. Sept. 1, 2001.

Art. 2.132. Law Enforcement Policy on Racial Profiling

(a) In this article:

(1) "Law enforcement agency" means an agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make traffic stops in the routine performance of the officers' official duties.

(2) "Race or ethnicity" means of a particular descent, including Caucasian, African, Hispanic, Asian, or Native American descent.

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

(1) clearly define acts constituting racial profiling;

(2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;

(3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;

(4) provide public education relating to the agency's complaint process;

(5) require appropriate corrective action to be taken against a peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;

(6) require collection of information relating to traffic stops in which a citation is issued and to arrests resulting from those traffic stops, including information relating to:

(A) the race or ethnicity of the individual detained; and

(B) whether a search was conducted and, if so, whether the person detained consented to the search; and

(7) require the agency to submit to the governing body of each county or municipality served by the agency an annual report of the information collected under Subdivision (6) if the agency is an agency of a county, municipality, or other political subdivision of the state.

(c) The data collected as a result of the reporting requirements of this article shall not constitute prima facie evidence of racial profiling.

(d) On adoption of a policy under Subsection (b), a law enforcement agency shall examine the feasibility of installing video camera and transmitter-activated equipment in each agency law enforcement motor vehicle regularly used to make traffic stops and transmitter-activated equipment in each agency law enforcement motorcycle regularly used to make traffic stops. If a law enforcement agency installs video or audio equipment as provided by this subsection, the policy adopted by the agency under Subsection (b) must include standards for reviewing video and audio documentation.

(e) A report required under Subsection (b)(7) may not include identifying information about a peace officer who makes a traffic stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the collection of information as required by a policy under Subsection (b)(6).

(f) On the commencement of an investigation by a law enforcement agency of a complaint described by Subsection (b)(3) in which a video or audio recording of the occurrence on which the complaint is based was made, the agency shall promptly provide a copy of the recording to the peace officer who is the subject of the complaint on written request by the officer.

Added by Acts 2001, 77th Leg., ch. 947, § 1, eff. Sept. 1, 2001.

Art. 2.133. Reports Required for Traffic and Pedestrian Stops

(a) In this article:

(1) "Race or ethnicity" has the meaning assigned by Article 2.132(a).

(2) "Pedestrian stop" means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.

(b) A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic or who stops a pedestrian for any suspected offense shall report to the law enforcement agency that employs the officer information relating to the stop, including:

(1) a physical description of each person detained as a result of the stop, including:

(A) the person's gender; and

(B) the person's race or ethnicity, as stated by the person or, if the person does not state the person's race or ethnicity, as determined by the officer to the best of the officer's ability;

(2) the traffic law or ordinance alleged to have been violated or the suspected offense;

(3) whether the officer conducted a search as a result of the stop and, if so, whether the person detained consented to the search;

(4) whether any contraband was discovered in the course of the search and the type of contraband discovered;

(5) whether probable cause to search existed and the facts supporting the existence of that probable cause;

(6) whether the officer made an arrest as a result of the stop or the search, including a statement of the offense charged;

(7) the street address or approximate location of the stop; and

(8) whether the officer issued a warning or a citation as a result of the stop, including a description of the warning or a statement of the violation charged.

Added by Acts 2001, 77th Leg., ch. 947, § 1, eff. Sept. 1, 2001.

Art. 2.134. Compilation and Analysis of Information Collected

(a) In this article, "pedestrian stop" means an interaction between a peace officer and an individual who is being detained for the purpose of a criminal investigation in which the individual is not under arrest.

(b) A law enforcement agency shall compile and analyze the information contained in each report received by the agency under Article 2.133. Not later than March 1 of each year, each local law enforcement agency shall submit a report containing the information compiled during the previous calendar year to the governing body of each county or municipality served by the agency in a manner approved by the agency.

(c) A report required under Subsection (b) must include:

(1) a comparative analysis of the information compiled under Article 2. 133 to:

(A) determine the prevalence of racial profiling by peace officers employed by the agency; and

(B) examine the disposition of traffic and pedestrian stops made by officers employed by the agency, including searches resulting from the stops; and

(2) information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

(d) A report required under Subsection (b) may not include identifying information about a peace officer who makes a traffic or pedestrian stop or about an individual who is stopped or arrested by a peace officer. This subsection does not affect the reporting of information required under Article 2.133(b)(1).

(e) The Commission on Law Enforcement Officer Standards and Education shall develop guidelines for compiling and reporting information as required by this article.

(f) The data collected as a result of the reporting requirements of this article shall not constitute prima facie evidence of racial profiling.

Added by Acts 2001, 77th Leg., ch. 947, § 1, eff. Sept. 1, 2001.

Art. 2.135. Exemption for Agencies Using Video and Audio Equipment

(a) A peace officer is exempt from the reporting requirement under Article 2.133 and a law enforcement agency is exempt from the compilation, analysis, and reporting requirements under Article 2.134 if:

(1) during the calendar year preceding the date that a report under Article 2.134 is required to be submitted:

(A) each law enforcement motor vehicle regularly used by an officer employed by the agency to make traffic and pedestrian stops is equipped with video camera and transmitter-activated equipment and each law enforcement motorcycle regularly used to make traffic and pedestrian stops is equipped with transmitter-activated equipment; and

(B) each traffic and pedestrian stop made by an officer employed by the agency that is capable

of being recorded by video and audio or audio equipment, as appropriate, is recorded by using the equipment; or

(2) the governing body of the county or municipality served by the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a)(1)(A) and the agency does not receive from the state funds or video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose.

(b) Except as otherwise provided by this subsection, a law enforcement agency that is exempt from the requirements under Article 2.134 shall retain the video and audio or audio documentation of each traffic and pedestrian stop for at least 90 days after the date of the stop. If a complaint is filed with the law enforcement agency alleging that a peace officer employed by the agency has engaged in racial profiling with respect to a traffic or pedestrian stop, the agency shall retain the video and audio or audio record of the stop until final disposition of the complaint.

(c) This article does not affect the collection or reporting requirements under Article 2.132.

Added by Acts 2001, 77th Leg., ch. 947, § 1, eff. Sept. 1, 2001.

Art. 2.136. Liability

A peace officer is not liable for damages arising from an act relating to the collection or reporting of information as required by Article 2.133 or under a policy adopted under Article 2.132.

Added by Acts 2001, 77th Leg., ch. 947, § 1, eff. Sept. 1, 2001.

Art. 2.137. Provision of Funding or Equipment

(a) The Department of Public Safety shall adopt rules for providing funds or video and audio equipment to law enforcement agencies for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), including specifying criteria to prioritize funding or equipment provided to law enforcement agencies. The criteria may include consideration of tax effort, financial hardship, available revenue, and budget surpluses. The criteria must give priority to:

(1) law enforcement agencies that employ peace officers whose primary duty is traffic enforcement;

(2) smaller jurisdictions; and

(3) municipal and county law enforcement agencies.

(b) The Department of Public Safety shall collaborate with an institution of higher education to identify law enforcement agencies that need funds or video and audio equipment for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A). The collaboration may include the use of a survey to assist in developing criteria to prioritize funding or equipment provided to law enforcement agencies.

(c) To receive funds or video and audio equipment from the state for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public Safety that the law enforcement agency needs funds or video and audio equipment for that purpose.

(d) On receipt of funds or video and audio equipment from the state for the purpose of installing video and audio equipment as described by Article 2.135(a)(1)(A), the governing body of a county or municipality, in conjunction with the law enforcement agency serving the county or municipality, shall certify to the Department of Public

Safety that the law enforcement agency has installed video and audio equipment as described by Article 2.135(a)(1)(A) and is using the equipment as required by Article 2.135(a)(1).

Added by Acts 2001, 77th Leg., ch. 947, § 1, eff. Sept. 1, 2001.

Art. 2.138. Rules

The Department of Public Safety may adopt rules to implement Articles 2.131-2.137.

Added by Acts 2001, 77th Leg., ch. 947, § 1, eff. Sept. 1, 2001.

d) Outline of Requirements Introduced by The Texas Racial Profiling Law

Guidelines for Compiling and Reporting Data under Texas CCP Article 2.132

Background

Senate Bill 1074 of the 77th Legislature established requirements in the Texas Code of Criminal Procedure (TCCP) Article 2.132 for Law enforcement agencies. Senate Bill 1074 passed the Senate on April 4, 2001 and the House on May 15, 2001. On September 1, 2001 the Racial Profiling law went into effect under TCCP Article 2.132. The Texas Commission on Law Enforcement Standards and Education (TCLEOSE) developed this document to assist agencies in complying with the statutory requirements.

The guidelines are written in the form of standards using a style developed from accreditation organizations including the Commission on Accreditation for Law Enforcement Agencies (CALEA). The standards provide a description of *what* must be accomplished by an agency but allows wide latitude in determining *how* the agency will achieve compliance with each applicable standard.

Each standard is composed of two parts: the standard statement and the commentary. The *standard statement* is a declarative sentence that places a clear-cut requirement, or multiple requirements, on an agency. The commentary supports the standard statement, but is not binding. The commentary serves as a prompt, as guidance to clarify the intent of the standard, or as an example of one possible way to comply with the standard.

Standard 1

Each law enforcement agency has a detailed written directive that:

- clearly defines acts that constitute racial profiling;
- strictly prohibits peace officers employed by the agency from engaging in racial profiling;
- implements a process by which an individual may file a complaint with the agency if the individual believes a peace officer employed by the agency has engaged in racial profiling with respect to the individual filing the complaint;
- provides for public education relating to the complaint process;

- requires appropriate corrective action to be taken against a peace officer employed by the agency who, after investigation, is shown to have engaged in racial profiling in violation of the agency's written racial profiling policy; and
- requires the collection of certain types of data for subsequent reporting.

Commentary

Article 2.131 of the TCCP prohibits officers from engaging in racial profiling, and article 2.132 of the TCCP now requires a written policy that contains the elements listed in this standard. The article also specifically defines a law enforcement agency as it applies to this statute as an “agency of the state, or of a county, municipality, or other political subdivision of the state, that employs peace officers who make traffic stops in the routine performance of the officers’ official duties.”

The article further defines race or ethnicity as being of “a particular descent, including Caucasian, African, Hispanic, Asian, or Native American.” The statute does not limit the required policies to just these ethnic groups.

This written policy is to be adopted and implemented no later than January 1, 2002.

Standard 2

Each peace officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic, or who stops a pedestrian for any suspected offense reports to the employing law enforcement agency information relating to the stop, to include:

- a physical description of each person detained, including gender and the person's race or ethnicity, as stated by the person, or, if the person does not state a race or ethnicity, as determined by the officer's best judgment;
- the traffic law or ordinance alleged to have been violated or the suspected offense;
- whether the officer conducted a search as a result of the stop and, if so, whether the person stopped consented to the search;
- whether any contraband was discovered in the course of the search, and the type of contraband discovered;
- whether probable cause to search existed, and the facts supporting the existence of that probable cause;
- whether the officer made an arrest as a result of the stop or the search, including a statement of the offense charged;
- the street address or approximate location of the stop; and
- whether the officer issued a warning or citation as a result of the stop, including a description of the warning or a statement of the violation charged.

Commentary

The information required by 2.133 TCCP is used to complete the agency reporting requirements found in Article 2.134. A peace officer and an agency may be exempted from this requirement under Article 2.135 TCCP Exemption for Agencies Using Video and Audio Equipment. An agency may be exempt from this reporting requirement by applying for the funds from the Department of Public Safety for video and audio equipment and the State does not supply those funds. Section 2.135 (a)(2) states, “the governing body of the county or municipality served by

the law enforcement agency, in conjunction with the law enforcement agency, certifies to the Department of Public Safety, not later than the date specified by rule by the department, that the law enforcement agency needs funds or video and audio equipment for the purpose of installing video and audio equipment as described by Subsection (a) (1) (A) and the agency does not receive from the state funds for video and audio equipment sufficient, as determined by the department, for the agency to accomplish that purpose.”

Standard 3

The agency compiles the information collected under 2.132 and 2.133 and analyzes the information identified in 2.133.

Commentary

The Texas Criminal Code of Procedure Article 2.132 created requirements for law enforcement agencies to gather specific information and to report it to each county or municipality served. New sections of law were added to the Code of Criminal Procedure regarding the reporting of traffic and pedestrian stops. Detained is defined as when a person stopped is not free to leave.

Article 2.134 TCCP requires the agency to compile and provide an analysis of the information collected by peace officer employed by the agency. The report is provided to the governing body of the municipality or county no later than March 1 of each year and covers the previous calendar year.

There is data collection and reporting required based on Article 2.132 CCP (tier one) and Article 2.133 CCP (tier two).

The minimum requirements for “tier one” data for traffic stops in which a citation results are:

- 1) the race or ethnicity of individual detained (race and ethnicity as defined by the bill means of “a particular descent, including Caucasian, African, Hispanic, Asian, or Native American”);
- 2) whether a search was conducted, and if there was a search, whether it was a consent search or a probable cause search; and
- 3) whether there was a custody arrest.

The minimum requirements for reporting on “tier two” reports include traffic and pedestrian stops. Tier two data include:

- 1) the detained person’s gender and race or ethnicity;
- 2) the type of law violation suspected, e.g., hazardous traffic, non-hazardous traffic, or other criminal investigation (the Texas Department of Public Safety publishes a categorization of traffic offenses into hazardous or non-hazardous);
- 3) whether a search was conducted, and if so whether it was based on consent or probable cause;
- 4) facts supporting probable cause;
- 5) the type, if any, of contraband that was collected;
- 6) disposition of the stop, e.g., arrest, ticket, warning, or release;
- 7) location of stop; and
- 8) statement of the charge, e.g., felony, misdemeanor, or traffic.

Tier one reports are made to the governing body of each county or municipality served by the agency an annual report of information if the agency is an agency of a county, municipality, or other political subdivision of the state. Tier one and two reports are reported to the county or municipality not later than March 1 for the previous calendar year beginning March 1, 2003.

Tier two reports include a comparative analysis between the race and ethnicity of persons detained to see if a differential pattern of treatment can be discerned based on the disposition of stops including searches resulting from the stops. The reports also include information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling. An agency may be exempt from the tier two reporting requirement by applying for the funds from the Department of Public Safety for video and audio equipment and the State does not supply those funds [See 2.135 (a)(2) TCCP].

Reports should include both raw numbers and percentages for each group. Caution should be exercised in interpreting the data involving percentages because of statistical distortions caused by very small numbers in any particular category, for example, if only one American Indian is stopped and searched, that stop would not provide an accurate comparison with 200 stops among Caucasians with 100 searches. In the first case, a 100% search rate would be skewed data when compared to a 50% rate for Caucasians.

Standard 4

If a law enforcement agency has video and audio capabilities in motor vehicles regularly used for traffic stops, or audio capabilities on motorcycles regularly used to make traffic stops, the agency:

- adopts standards for reviewing and retaining audio and video documentation; and
- promptly provides a copy of the recording to a peace officer who is the subject of a complaint on written request by the officer.

Commentary

The agency should have a specific review and retention policy. Article 2.132 TCCP specifically requires that the peace officer be promptly provided with a copy of the audio or video recordings if the officer is the subject of a complaint and the officer makes a written request.

Standard 5

Agencies that do not currently have video or audio equipment must examine the feasibility of installing such equipment.

Commentary

None

Standard 6

Agencies that have video and audio recording capabilities are exempt from the reporting requirements of Article 2.134 TCCP and officers are exempt from the reporting requirements of Article 2.133 TCCP provided that:

- the equipment was in place and used during the proceeding calendar year; and

- video and audio documentation is retained for at least 90 days.

Commentary

The audio and video equipment and policy must have been in place during the previous calendar year. Audio and video documentation must be kept for at least 90 days or longer if a complaint has been filed. The documentation must be retained until the complaint is resolved. Peace officers are not exempt from the requirements under Article 2.132 TCCP.

Standard 7

Agencies have citation forms or other electronic media that comply with Section 543.202 of the Transportation Code.

Commentary

Texas Criminal Code of Procedure Article 2.132 changed Section 543.202 of the Transportation Code requiring citations to include:

- race or ethnicity, and
- whether a search of the vehicle was conducted and whether consent for the search was obtained.

II Background

a) City of El Paso Historical and Demographical Information

City of El Paso

The City of El Paso, Texas is situated on the border with Mexico and features a scenic landscape and friendly population highly regarded for its unique cultural blend. Founded over four centuries ago as an outpost for traders and missionaries in the west, El Paso's dynamic growth has been credited to the development of an integrated international trade region with Ciudad Juárez, Mexico long before free-trade zones and global markets flourished. According to the 2000 Census, El Paso is the fifth largest city in the State of Texas and the twenty-third largest city in the United States with a population of 563,662 covering 251.2 square miles. Ciudad Juárez, El Paso's sister city, is the largest city in the State of Chihuahua and the fifth largest city in all of Mexico with a population of approximately 1.3 million.

b) El Paso Police Department's Background/Demographics

El Paso Police Department

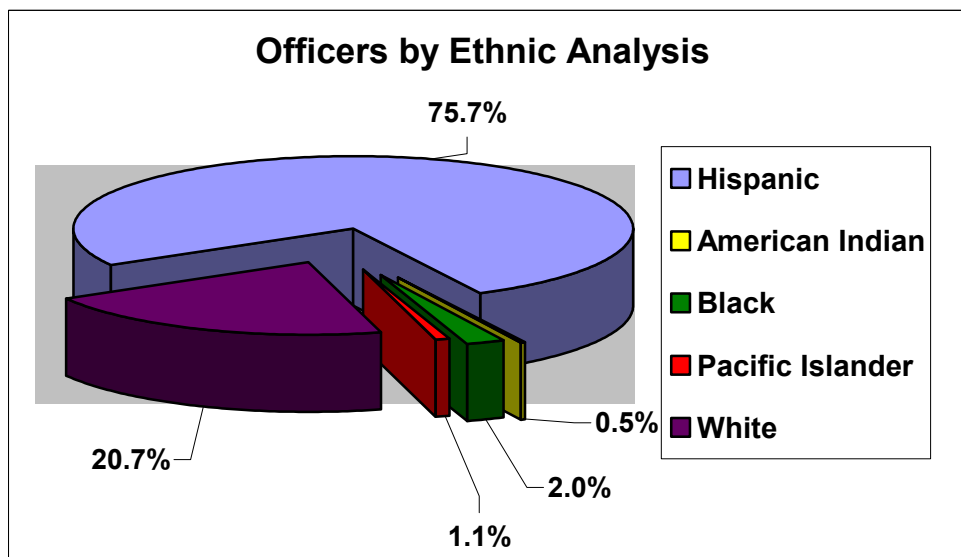
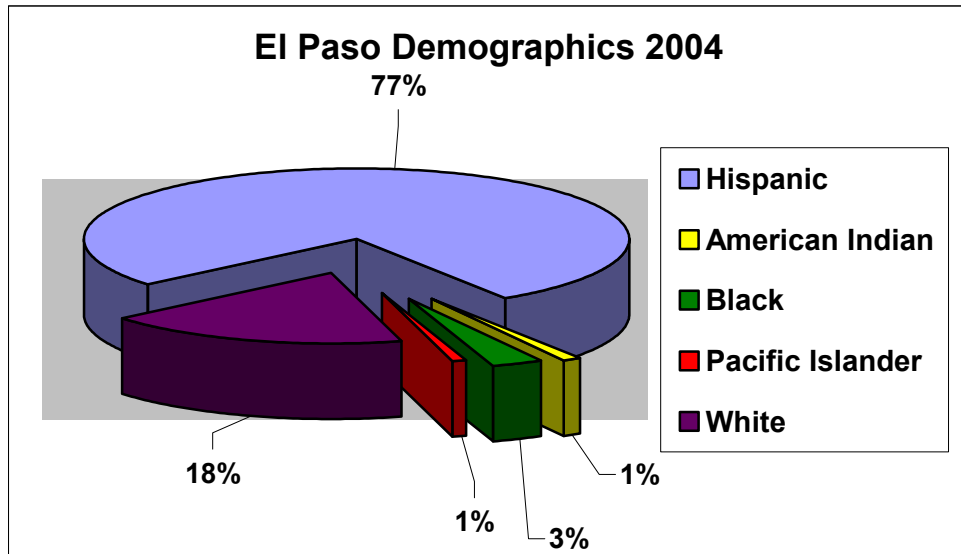
Early law and order in El Paso was turbulent with city marshals being hired solely for their ability to shoot fast and straight. The first city marshal was appointed in 1873.

Late in 1880, Marshal Dallas Stoudermire killed five men in one shoot-out. During this time, the town was open to outlaws. By 1883, the city marshal's force was expanded to five officers. The following year marked the establishment of what is now known as the El Paso Police Department.

The El Paso Police Department currently employs 1,092 officers and 324 civilian employees who serve with pride and dedication. The Department is committed to providing quality community policing from its five Regional Command Centers located throughout the city. Each Command Center offers full policing services to its residents including routine patrol, traffic enforcement, detective services, community relations and other specialized functions. The Department's administration and centralized major crime units are housed in its centrally located Headquarters Building.

Law enforcement in El Paso presents a unique challenge due to its proximity to both an international and State border. Each day, thousands of people enter El Paso from Mexico and New Mexico to visit, work and shop. Along with Interstate 10, a major East/West corridor, and annual events such as the Sun Bowl, the population of El Paso can fluctuate significantly. Additionally, El Paso is the home of Fort Bliss, the Army's Air and Missile Defense Centerpiece. Fort Bliss trains over 10,000 students a year and supports 12,000 active duty soldiers, 16,500 family members, 7,500 civilian employees and over 81,500 government retirees and their families. The post encompasses over 1.1 million acres of gunnery, maneuver and range areas and adds 1.1 billion to the regional economy each year.

The following is the ethnic analysis for the City of El Paso in comparison with the officers of the El Paso Police Department. We are fortunate that the ethnic makeup of our officers mirrors that of the community we serve.



c) El Paso Police Department's applicable General Order/Procedures

Below are sections of the Police Department's Procedures Manual that are applicable to the racial profiling report:

Procedures Manual of the El Paso Police Department

MISSION STATEMENT

It is the mission of the El Paso Police Department to provide services with integrity and dedication, to preserve life, to enforce the law, and to work in partnership with the community to enhance the quality of life in the City of El Paso.

CORE VALUES

WE RESPECT LIFE . . .

We hold the preservation of life as our sacred duty. Our value of human life sets our priorities.

WE REVERE THE TRUTH . . .

We accept nothing less than truth, honesty and integrity in our profession.

WE ENFORCE THE LAW . . .

We recognize that our basic responsibility is to enforce the law. Our role is to resolve problems through the law, not to judge or punish.

WE SEEK COMMUNITY PARTNERSHIP . . .

We view the people of our community as partners who deserve our concern, care and attention. We are committed to reducing the fear of crime in our community, and we endeavor to do this by creating partnerships in our neighborhoods.

WE HONOR OUR POLICE POWERS . . .

We understand that our police powers are derived from the people we serve. We do not tolerate the abuse of our police authority.

WE CONDUCT OURSELVES WITH DIGNITY . . .

We recognize that our personal conduct, both on and off duty, is inseparable from the professional reputation of both the Officer and the Department.

1-501. DISCRIMINATION. Employees have the right to a workplace free from discrimination, intimidation, retaliation and harassment from co-employees and supervisory personnel.

1-501.01 POLICY. It is the policy of the Police Department to maintain a working environment free of discrimination, harassment and intimidation and to foster the fair and respectful treatment of employees and the public. As protectors and defenders of the community, it is especially critical for Police Officers to exhibit an attitude of tolerance and respect toward all citizens and fellow employees.

A. Employees will treat one another and members of the public with respect at all times. Employees who participate in any kind of discrimination, harassment, retaliation, or intimidation of another employee or a member of the public will be subject to disciplinary action, which may include termination. This includes, but is not limited to, negative prejudicial remarks, offensive jokes, the promotion of stereotypes and ridicule based on personal characteristics, age, health, race, ethnicity, sex, or sexual orientation.

B. Employees who report any misconduct are not to be subjected to any form or kind of harassment, retaliation or intimidation by co-employees, their chain of command, or any supervisory personnel.

1-501.02 PROCEDURE. Employees are encouraged to notify a supervisor, any command officer, the Chief of Police, Personnel Director, or the City Attorney's Office to report instances of ridicule, intimidation, or discrimination.

A. Employees who feel they are the subject of harassment or intimidation as a result of reporting wrongdoing, may immediately bring their complaint to any supervisor within their chain of command, any command officer, the Chief of Police, Personnel Director or the City Attorney's Office.

B. Any supervisor who receives a report of such misconduct will immediately take appropriate action to investigate the allegation or have it investigated by the appropriate authorities. Supervisory personnel will enforce all policies and procedures. If misconduct is reported by one employee against another, supervisors will ensure that no harassment, retaliation or intimidation of the reporting employee occurs.

1-502. SEXUAL HARASSMENT. Sexual harassment is a violation of Federal and State law and of City and Department policy; likewise, retaliation against an employee who files a complaint of sexual harassment is also prohibited by law. Respect for individual dignity is an integral part of this Department's philosophy and must be practiced by all employees.

1-502.01 "ZERO TOLERANCE" POLICY. The Department's Sexual Harassment Policy is in addition to the City of El Paso's Sexual Harassment Policy. Sexual harassment is viewed by the Department as serious misconduct that may result in disciplinary action as serious as termination. The City and the Department take a zero tolerance stance on sexual harassment.

1-502.02 DEFINITION. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other written, visual, verbal or physical conduct of a sexual nature or harassment that is based on gender when one or more of the conditions below exist:

- A. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment.
- B. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.
- C. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

1-502.03 EMPLOYEE RESPONSIBILITY. Employees observing behavior they believe to be sexual harassment may choose to confront the offender directly, especially if the offended employee considers the offense minor in nature. Communicating personal boundaries and tolerances with others is important to reducing misunderstandings, increasing awareness and promoting mutual respect. However, confronting an offender is not a pre-requisite or requirement for reporting the incident to a supervisor, the Personnel Director, or the City Attorney's Office.

A. Reporting Sexual Harassment. If an offended employee is uncomfortable with approaching the offender, or if the behavior continues after the employee has put the offender on notice, the offended employee may contact any of the following for assistance:

- 1) Any Department supervisor
- 2) Any Command Officer
- 3) The Chief of Police
- 4) The Personnel Director
- 5) The City Attorney's Office

B. Third Party Observations. Employees who witness conduct they believe is sexual harassment will report the incident to a supervisor immediately, irrespective of whether the offender was confronted directly. Employees who do not receive satisfactory response to their complaint will contact the next level of supervision or the City Attorney's Office.

1-502.04 SUPERVISOR RESPONSIBILITY. Supervisory employees will ensure that each workplace has a working atmosphere free from sexual harassment for all

employees. The working environment will be businesslike, ensuring fair and courteous treatment for all employees and the public they serve.

A. Supervisors Mandate. Supervisors observing or made aware of any action or conduct that may be interpreted as sexual harassment will initiate an internal investigation. There is no discretion on the part of the supervisor under this circumstance. All complaints will be reported to the Personnel Director through the chain of command.

B. Confidentiality. Supervisors will ensure that, at their level, complaints of sexual harassment, and the investigation into the allegations, remain confidential.

1-502.5 COMMAND RESPONSIBILITY. Commanding officers are responsible for ensuring that their commands are free of sexual harassment by providing appropriate training and inspection. Commanding officers will ensure that supervisors assigned to their commands strictly enforce the policy of the Department against sexual harassment in a prompt and appropriate manner.

1-503. BUILDING SECURITY AND VISITOR CONTROL. Department employees are responsible for maintaining the standards and attitudes which establish a secure and protected work environment. All employees will follow the procedures for enforcing the required control measures.

6-201. CITIZEN'S ADVISORY COMMITTEE TO THE CHIEF OF POLICE. The Chief's Advisory Committee is an independent advisory group appointed by, and under the direction of, the Chief of Police. Its duty is to advise the Chief of Police, the Police Department and the citizens of El Paso on matters regarding the maintenance of law and order. This committee serves as a liaison between the community and the Department. In making the selection for members, the Chief shall accept recommendations from community leaders and shall consult City Council members regarding the selection of committee members representing each geographical region of the City.

6-201.01 AUTHORITY. The committee exists only to advise and make recommendations of its findings to the Chief of Police.

6-201.02 MEMBERSHIP. The membership of the committee will consist of not less than thirteen and no more than 22 members, each serving a three year term. Members are eligible for re-appointment to a second term. The membership should be a true representation of the diversity of the City of El Paso and members must be able to attend the committee's monthly meetings.

6-201.03 ACCESS. Advisory Committee Members may periodically observe the various Divisions of the Department to better understand the dynamics of the organization. Committee members will be granted access to all areas of the Department not designated as restricted access areas and will not be required to provide advance notice for their visits. Committee members are issued identification cards, which may be presented for access to areas of the Department.

6-202. REGIONAL COMMAND ADVISORY BOARDS. Each Regional Commander will form an Advisory Board and submit the names of participating community members to the Chief's Office. Once each Regional Command has established its Advisory Board, training workshops for board members and Commanders will be scheduled.

6-202.01 ROLE OF CITIZEN'S ADVISORY BOARDS. The role of these Advisory Boards is to advise and inform Regional Commanders of community problems and concerns. In the spirit of partnership, each Advisory Board will serve in advisory capacity to identify problems and propose solutions. Regions will provide feedback to the community through the Advisory Boards regarding regional operations and needs relative to these concerns.

6-202.02 COMMITTEES. When a problem or concern specific to a localized area within the community arises, the Advisory Board may designate a committee or working group comprised of board members or other members of the community to investigate the matter and report to the board. The appropriate number of participants will be at the discretion of the Advisory Board. The Advisory Board will review committee and working group reports and make recommendations to the Regional Commander.

6-202.03 RESPONSIBILITIES OF CITIZEN'S ADVISORY BOARDS. It is the responsibility of Citizen's Advisory Boards to:

- A. Assist Department leaders through community input to make quality decisions. They should advise and inform the Department of community problems and concerns.
- B. Help identify short-term and long-term concerns of the community and help identify priorities and solutions.
- C. Mobilize community resources and strengthen ties within the community.
- D. Coordinate with other agencies, community organizations, and service centers to resolve community problems.
- E. Communicate information on the role and operations of the Police Department to the community.
- F. Assist in Community-Police problem-solving by analyzing problems, recommending solutions, and reviewing the progress or results of recommended strategies.

6-202.04 REGIONAL COMMANDER RESPONSIBILITIES. Each Regional Commander will form a Citizen's Advisory Board. The Advisory Board may be composed of as many members as the Commander feels are necessary, while still maintaining a workable group size. The Advisory Board will be co-chaired by the Regional Commander and a representative chosen by board members.

6-202.05 SELECTION CRITERIA. Regional Commanders have the authority to appoint members of Advisory Boards. Selection should be made on the basis of a wide range of community input and not be restricted to those who openly support the Department.

- A. QUALIFICATIONS. Members will be selected at large for the Advisory Board. Membership may be drawn from existing organizations within communities of the region. Members should be respected in the community, knowledgeable about conditions in their community, and have the ability to work well in a group setting. They should also have the ability and willingness to inform the public or their constituents of activities of the Advisory Board.
- B. DIVERSITY. Commanders will consider the diversity of their region such as ethnic, religious, business, and community affiliations, when forming Advisory Boards.
- C. REPRESENTATION. Advisory Boards will represent the region at large and will not be dominated by any group or individual. Advisory Boards will not replace other existing community/police alliances, support groups or partnerships such as neighborhood watch groups.

D. MEMBERSHIP. Membership on an Advisory Board will be on a one year renewable term. Regional Commanders will ensure that each member of their Advisory Board receives a region-specific identification card.

6-202.06 MEETINGS. It is recommended that Citizen's Advisory Boards meet on a monthly basis. All meetings will be open to the public and take place in a venue with reasonable access.

A. MINUTES. The content of each meeting will be documented in formal, written minutes.

B. SUPPORT. Regional Commanders will provide the staffing necessary to prepare, distribute, and file minutes of meetings.

C. PUBLIC RECORDS. The minutes of Advisory Board meetings will be considered and retained as public records.

D. DISTRIBUTION. Copies of Advisory Board meeting minutes will be forwarded to the Regional Commander. However, Regional Commander approval of Advisory Board minutes will not be required.

6-301. CITIZEN'S POLICE ACADEMY. The goal of the Citizen's Police Academy is to provide citizens of El Paso with an orientation of the mission, structure, and the philosophies of the El Paso Police Department. This program is designed to increase the level of police/community cooperation and to encourage citizens to become active participants in Community Policing.

6-301.01 COURSE OF INSTRUCTION. The Citizen's Police Academy is a course of instruction conducted by the Department. Topics include training, communications, criminal investigations, Internal Affairs investigations, and specialty teams. Emphasis is on patrol operations, the area of police work where the majority of citizen/police contact is made.

6-301.02 ELIGIBILITY. Any citizen who is at least 21 years of age and has a sincere desire to learn about the Department may attend. Citizens are encouraged to commit to the entire course of instruction.

6-302. YOUTH POLICE ACADEMY. The Youth Police Academy is a program, similar to the Citizen's Police Academy, which is designed to educate the youth of El Paso regarding the mission, structure and activities of the Department. Students ages 11 through 19 are eligible to enroll.

6-303. VOLUNTEER PROGRAM. EPPD Volunteers help with the myriad of administrative details necessary to manage a modern police department. Volunteers work at all hours of the day, throughout the Department. They answer phones, type, enter computer data, and perform many other administrative functions.

6-303.01 VOLUNTEER HOURS. Volunteers work the hours that best suit their preferences. They do not get paid for their work, however, it is equally important to document the hours worked so that they receive full recognition for their contributions to the Department and the community. Volunteer time sheets will be submitted to the Volunteer Coordinator.

6-303.02 APPLICATION PROCESS. Any citizen is eligible to apply. Applications for becoming a Police Department Volunteer may be obtained at any Regional Command Center or at Police Headquarters. A background check will be performed on all volunteer applications, processed by the Volunteer Coordinator, before being permitted to perform volunteer work for the Department.

6-303.03 RESTRICTED ACCESS. Volunteers may be restricted from access to records, RMS, and certain areas of the Department. Authorization for RMS access will be determined by the Division Commander.

6-304.04 VOLUNTEER PROGRAMS. The EPPD Volunteers also operate the "McGruff," "Eyes & Ears," and "School Traffic Safety" programs.

6-304. CITIZENS ON PATROL (COP) PROGRAM. Local merchants are allowed an opportunity to participate directly with the Officers who patrol the areas in which they operate

their businesses. COPs members are paired with regular Officers and assigned to walk a patrol beat as a team. The team works together to improve the quality of life within the area.

6-304.01 ELIGIBILITY. Participants must be at least 18 years of age, possess a valid photo identification, have no felony convictions, and no convictions for Class "A" or "B" misdemeanors within the last 2 years.

6-304.02 REQUIREMENTS. All participants will attend a training session before being allowed on patrol. COPs participants will dress appropriately and will wear program insignia designating them as a COPs member.

6-304.03 SCOPE. COPs members may participate as little or as often as they wish. While on patrol, COPs members have no policing power or authorities beyond that of the average citizen. COPs participants will not carry weapons of any kind and will avoid becoming involved in actual enforcement activities.

6-304.04 APPLICATION. Applicants must complete the Citizens on Patrol application form, submit to a background check, sign a release of liability form, and attend a COP's training session.

6-304.05 APPROVAL. The Department will, in all cases, have the right to refuse admission into the program or to revoke program membership if, at any time, it is felt that such action is necessary.

3-304. MOBILE VIDEO POLICY. The Department provides mobile video/audio recording equipment in patrol vehicles for the purpose of gathering evidence in prosecution of traffic violations and other offenses, and to enhance officer safety. In order to maximize the effectiveness of this equipment, officers will follow the procedure as set forth.

3-304.01 OBJECTIVES. This agency has adopted the use of in-car Mobile Video Recording to accomplish the following objectives:

- A.** Accurate documentation of events, actions conditions, and statements made during arrests and critical incidents, so as to document officers' reports, collection of evidence and testimony in court; and
- B.** To enhance the department's ability to review arrest procedures, officer interaction with the public and suspects, and evidence for investigative purposes, as well as for officer's evaluations and training.

3-304.02 OPERATING PROCEDURES.

- A.** Mobile Video Recording equipment installed in vehicles is the responsibility of the officers assigned to that vehicle and will be operated according to the manufacturer's recommendations.
- B.** Prior to each shift, officers will determine whether their Mobile Video Recording equipment is working satisfactorily and will bring any problems to the attention of their immediate supervisor who will determine if the vehicle will go on patrol.
- C.** Mobile Video Recording will automatically activate when the vehicle's emergency warning devices are in operation. The equipment may be manually deactivated during non-emergency activities such as when performing traffic control at accident scenes and emergency responses to non-enforcement types of calls such as medical assistance.
 - 1.** Whenever equipment is manually deactivated, officers will document the reasons for this action on the video prior to deactivation.
 - 2.** At all times when the unit is on, the wireless microphone will be activated to record the audio portion of the incident.
- D.** The officer is responsible for ensuring that equipment is in operating order to record traffic stops or other enforcement actions. In doing so they will ensure that:
 - 1.** The video recorder is positioned and adjusted to record events;

2. The Mobile Video Recorder is not deactivated until the enforcement action is completed and the offender vehicle has pulled away; and
 3. Their wireless microphone is activated in order to provide narration with the video recording to explain the reason for their current or planned enforcement action.
- E. Where possible, officers will also use their Mobile Video Recorder equipment to record:
1. All traffic stops;
 2. Document crime scene and accident scenes or other circumstances at events such as the confiscation and documentation of evidence or contraband;
- F. The actions of suspects during interviews, when undergoing sobriety checks, when following a suspected DUI offender prior to conducting traffic stops, or when placed in custody.
- G. Officers will not turn off the Mobile Video Recorder for any reason during a traffic stop.
- H. Officers will not erase, reuse or in any manner alter MVR tapes, or in any way interfere with the recording system, re-tape over any incident, or intentionally cause the unit to malfunction.
- I. All completed tapes will be properly labeled with the officer's name and dates of use prior to being submitted with related documentation.
- J. Officers are encouraged to inform their supervisor of any videotape sequences that may be of value for training purposes.
- K. Officers will note in incident, arrest and related reports when video/audio recordings were made during the incident in question.
- L. Officers will only use videotapes as issued and approved by the department.

3-304.03 TAPE CONTROL AND MANAGEMENT.

- A. The duty supervisor will have the keys for each MVR system and will change the tape on the police vehicles as needed.
- B. Mobile Video Recording tapes containing information that may be of value for case prosecution or in any criminal or civil adversarial proceeding will

be safeguarded. As such, these videotapes will not be released to another criminal justice agency for trial or other reasons without having a duplicate copy made and returned to safe storage.

- C. Tapes not scheduled for court or complaint proceedings shall be maintained for 90 days at the Regional Commands and will be taken to ID&R for copying as necessary. Copying machines will be located at ID&R and at Professional Responsibility Unit. All tapes shall be maintained in a manner that allows efficient identification and retrieval.
- D. If any complaint is filed with the department with respect to an incident appearing on the videotape, including alleged racial profiling, the department shall retain the video/audio record of the stop until final disposition of the complaint including any claim or lawsuit filed against the City.
- E. On written request by an officer to the Professional Responsibility Unit, the PRU shall provide that officer with a copy of the recording in which a racial profiling complaint has been filed. The PRU will keep documentation regarding the release of the tape to the officer and will notify the Chief of Police of the request.
- F. No videotapes shall be re-issued for operational use unless completely erased by designated personnel of the department

3-3.04.04 SUPERVISORY RESPONSIBILITY. Supervisory personnel will be responsible for changing out the tape after a twenty-four hour period, or as needed, to maintain the integrity of the tape for evidentiary purposes, which will be under lock and key. They shall ensure that:

- A. All officers follow established procedures for the use of MVR equipment, and completion of MVR documentation;
- B. On a bimonthly basis, randomly review videotapes and recordings to assist in periodic assessment of officers performance, determine whether the MVR equipment is being fully and properly used and to identify material that may be appropriate for training;
- C. Ensure that repairs and replacement of damaged or non-functional MVR equipment is performed; and
- D. All statistical reporting requirements are being completed as required to ensure adequate program evaluation.

3-304.05 TRAINING.

- A. All officers will receive training on camera equipment prior to use

- B. The trained officer will receive a written copy of the directions on the use of the camera.

3-304.06 Disposition of Tapes (Evidence). All video tapes of arrests will be turned in as evidence, including defective recordings.

A. DWI Tapes. The **original** video tape will be placed into the D.A.'s video box located at Central Regional Command. If the DWI video has a higher additional charge recorded on the same video, the tape will be turned in per procedures for all other arrests as described below.

B. All Other Video Taped Arrests. All other video tapes of arrests will be turned in as per procedure for all other evidence in criminal cases. The tape will be placed in a Property Office locker located at each Regional Command.

d) Report on Inventory/Usage of Video/Audio Equipment in Police Vehicles

The vast majority of marked patrol vehicles (273 of 313) within the Department are equipped with video and audio equipment. Additionally, all new marked patrol vehicles procured by the department include video and audio equipment in the acquisition specifications.

TEXAS DEPARTMENT OF PUBLIC SAFETY

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COMMISSIONERS

September 27, 2002

RECEIVED
OCT 04 2002
OFFICE OF
THE CHIEF OF POLICE

Chief Carlos Leon
El Paso Police Department
911 N. Raynor
El Paso, Texas 79903

RE: Video units – Senate Bill 1074/Articles 2.131 *et seq.* of the Texas Code of Criminal Procedure

Dear Chief Leon:

The Texas Department of Public Safety ("Department") is pleased to inform you that your law enforcement agency has been approved to receive 74 video unit(s), at no charge to your agency.

The Texas Council of Competitive Government, on behalf of the Department, selected Mobile-Vision, Inc. ("Mobile-Vision") as the successful vendor to supply the video units to the successful applicants.

This letter will serve as your voucher to receive your video unit(s). This voucher must be received by Mobile-Vision by the **1st day of September, 2003**, or the voucher will be invalidated. The estimated delivery date for your video unit(s) is during the month of **October, 2003**.

Please send your voucher to Mobile-Vision (via facsimile or mail) at the following address or facsimile number:

Mobile-Vision, Inc.
90 Fanny Road
Boonton, NJ 07005
Facsimile (973) 316-9509

Once Mobile-Vision receives your voucher, Mobile-Vision will ship the video unit(s), upon production, to your contact address listed below.

EQUAL OPPORTUNITY EMPLOYER
COURTESY • SERVICE • PROTECTION

Once you receive the video unit(s), you must complete the attached receiving report and fax it to the Department at the following facsimile number and section **within five (5) calendar days of your receipt of the video unit(s)**:

Facsimile (512) 424-2749
Grant Section (SB 1074)

Please fill in the following information before you send this voucher to Mobile-Vision:

- 1) Information for Mobile-Vision to contact you:
 - a. Contact person - Milton R. Roberts
 - b. Contact phone number - (915) 564-7369
 - c. Contact address - 911 N. Raynor
El Paso, Texas 79903
 - d. Contact facsimile number - (915) 564-7367
- 2) Vehicle Information – model, year and number of vehicles for installation of awarded video units:
 - a. Model - Ford Crown Victoria
Year - 2003
Number of vehicles with this model and year - 50
 - b. Model - Ford F150 extended cab PU
Year - 2003
Number of vehicles with this model and year - 2
 - c. Model - Ford Crown Victoria
Year - 2001
Number of vehicles with this model and year - 22

If you need additional space to provide this requested information, please attach additional sheets.

Once your law enforcement agency has installed the video unit(s), your agency and the governing body of the county or municipality served by your agency, if any, must complete the attached certification and return it to the Department, pursuant to Article 2.137(d) of the Texas Code of Criminal Procedure and 37 TEX. ADMIN. CODE §1.284 (h). The attached certification must be received by the Department or post-marked with the proper Department address within 60 calendar days of your agency's receipt of the video unit(s) from Mobile-Vision. Please mail your certification to the Department at the following address: Grant Section (SB 1074), Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0130.

To the extent your agency was not awarded all of the video units requested in your application, this letter shall serve as your agency's exemption from the following: 1) your peace officer's reporting requirements under Article 2.133; and 2) your agency's compilation, analysis and reporting requirements under Article 2.134. See Article 2.135(a) (2) of the Texas Code of Criminal Procedure.

If you want to add any of the available options, you must contact Mobile-Vision directly. If you order any of the available options, Mobile-Vision will directly bill your agency and your agency will be responsible for paying for the options.

Your agency may be eligible to purchase additional video units on the state contract with Mobile-Vision. For more information about the state contract, please contact the Texas Building and Procurement Commission at (512) 463-3416 or 1-888-472-0500.

Sincerely,

Thomas A. Davis, Jr.
Director

Enclosures (2)

TAD:RKE:JE:AA

e) Partnerships with Local Community

The El Paso Police Department is very active within its area of responsibility and recognizes the uniqueness and cohesiveness of our community, which borders Mexico. Our programs are directed to the low income, elderly, youth, and business communities without regard to race, color, religion, sex, national origin, political affiliation, sexual orientation, or disability. Our Department subscribes to the philosophy of Community Policing, which is a management style, and organizational strategy that promotes proactive problem-solving and police community partnerships to address the cause of crime and fear as well as other community issues. We utilize a neighborhood approach to ensure participation by all within our community. Below you will find a brief summary of the variety of programs we have incorporated into our community policing efforts in order to reach out and assist our very exciting and diverse community.

1. District Teams – a line level organizational structure based on cooperation and information sharing where the district officers from all three shifts, a Detective, PAR officer, Motor officer, CRASH officer, and a civilian from the Citizens Advisory Board work together in a geographical district to solve problems. Officers are assigned to a specific district and are expected to remain there as much as practical. District responsibility is a part of Community Policing, and in addition to handling patrol calls, the officers are expected to make public contacts, check businesses, check homes with code watches, and occasionally have lunch at one of their schools during the day shift. The goal is for officers to remain in their districts and learn as much as possible about their area, understand the concerns of the residents, and share information about the district and related problems.
2. Youth Advisory Board – a cooperative between the Commands and area high school students, where the members plan and organize projects, presentations, and events. The projects cover a wide range of issues, including neighborhood clean-ups, youth mentoring and outreach, and monthly nursing home visits.
3. Citizens Advisory Board – A Cooperative between the Chief of Police, the Commands and the citizens from the community that supports and shares in the responsibility with the Police Department of protecting our community from crime and its consequences. The board works to maintain order to enhance the quality of life in our neighborhoods by serving as a liaison between the community and the Police Department. Moreover, the board encourages the concept of teamwork and greater community-police interaction to solve the problems of our community.
4. Underage Drinking Initiative – in 2000, the Citizens Advisory Board and the Commands established the “Underage Drinking Initiative” to combat the problem of underage drinking and its related problems, primarily youth related traffic fatalities. The board developed strategies to empower and educate youth on the consequence of underage drinking, including drinking and driving. From this, the following strategies were implemented:

- ❑ Underage Drinking Education: The Citizens Advisory Board and Officers from the Command Centers, along with members of the business and legal community, conducted educational presentations to area high schools that explained the consequences associated with underage purchase, sale, and consumption of alcohol. The presentations included an explanation of the law and “what could happen”, including the affects of alcohol related convictions, automobile insurance issues, and criminal and civil prosecution, fines, and punishment.
 - ❑ “Stop Underage Drinking” Poster Contest: The Central Regional Command and its Advisory Board in conjunction with several local community groups sponsored a poster contest for high school students. Through their entries, students are empowered to make a difference and stop underage drinking through their own creativity.
 - ❑ Convenience Store/Community Cooperative: Officers, Advisory Board members, and area high school students teamed up visiting every local business where alcohol is sold. The teams met with the businesses, requesting to place the winning poster from the above contest in a highly visible area of the businesses.
 - ❑ International Bridge Outreach: On strategic evenings, an officer and members of the Citizens Advisory Board positioned themselves on the Paso Del Norte Bridge – US Port of Entry. As groups of teenagers walk over to Mexico, a board member will approach and speak with the group, explaining the consequences of underage drinking; specifically, drinking and driving, and request that one member of the group pledge to be a designated driver. The board member then gives that person a red wristband. With this wristband, the person receives free sodas and water while at any nightclub or bar in Juarez, Mexico, which is accomplished through an agreement with Mexican nightclub and bar owners.
 - ❑ International Bridge Operations: In cooperation with the Citizens Advisory Board and US Customs and Immigration, Officers from the Central Regional Command’s Metro-Bike Section conducted weekend and other strategic night operations at the Paso Del Norte Bridge – US Port of Entry to screen at-risk youth as they returned from Mexico.
5. Operation School Bell – officers work in coalition with the Assistant League of El Paso and provide logistical support to this program, which provides school clothing for needy elementary school students.
 6. D.A.R.E. – officers, who are certified, teach the traditional drug abuse program for students in 5th grade. The program emphasizes drug identification and gives children skills to recognize and resist the pressures that cause them to experiment with drugs, alcohol, gangs, and violence.
 7. Safety Patrol – a program sponsored by Downtown Lion’s club, where central elementary schools select one outstanding safety patrol boy/girl to be honored for their outstanding performance and exemplary conduct. An officer takes the

student to be honored on a tour of a radio/TV station, the El Paso Times, and for a luncheon.

8. Neighborhood Watch Program – Officers work to build pride, forge bonds, improve citizen-police relations, and address neighborhood issues and concerns by working with the community to establish Neighborhood Watch Groups throughout the area. Participants receive continuous training and are educated on many topics.
9. H.E.A.T. – a voluntary statewide vehicle registration and theft deterrent program administered by the Texas Department of Public Safety. Officers conduct registration drives, signing-up community residents who agree to the program's 1:00 am to 5:00 am heightened alertness. During this time, any peace officer who observes a participating vehicle being driven in Texas during those hours may stop the vehicle and verify ownership.
10. Help One Student To Succeed (HOSTS)– officers participate in a reading mentor program with students ranging from elementary to high school. Once a week, officers read with a student at a participating area school.
11. Great American Clean Up – officers work in partnership with “Keep El Paso Beautiful” to organize and conduct an annual springtime clean up, which mobilizes the community to get out and clean up. Officers also provide presentations to area schools and coordinate student groups to assist with the clean up.
12. Pride Day – officers work in partnership with other City agencies to organize and conduct an annual fall clean up in El Paso. Officers mobilize large segments of the community to take responsibility for their dilapidated areas. Community involvement is diverse, including neighborhood residents, schools, civic groups, and businesses.
13. Halloween Carnivals – officers and police explorers participate in Halloween festivities at Bassett Center, a local shopping center, and the Armijo Halloween Carnival – an annual City Library and Recreation Dept. sponsored carnival. The officers and police explorers provide fingerprinting, and safety tips on Halloween costumes and “Trick-or-Treating.”
14. Dia de los Ninos – Dia de Libros – a collaborative between the City's Public Library, Parks and Recreation, and the Police Department, who put on a day long celebration at Washington Park with the theme “Opening the World of Books to All Children.” The celebration is in the form of a carnival-like atmosphere that provides children and their families with entertainment, rides, activities, and most importantly books.
15. Chevron Health Fair – a health fair involving multiple agencies that provide various services to the community. Officers and police explorers fingerprint

children and give information about free programs offered by the El Paso Police Department.

16. Thanksgiving Dinners – a citywide effort that offers a traditional Thanksgiving dinner to underprivileged children who normally would not eat a Thanksgiving meal. This program is sponsored by Pizza Hut and conducted with the assistance of area school districts, which selects all the participants.
17. Shoe Fund – a citywide program funded by officer contributions and sponsored by an area shoe business, which provides new shoes for underprivileged children. The child receives a voucher at a ceremony provided by the officers. The child then, either with a parent or with a school official, visits the shoe business and receives a new pair of shoes.
18. Secret Santa- officers work in conjunction with Clear Channel Communication, a nation-wide radio communications company, to provide Christmas gifts to area children, which are received through listener donations.
19. Elderly Tree – an officer or a civilian employee selects the name of an elderly person from a Senior Citizen's Center and purchases a Christmas gift for them. The employee attends a Christmas celebration where they interact with the senior citizens and pass out the gifts.
20. Police Explorers – a Department based, Boy Scouts of America sponsored program where youth, ages 14 to 20, are educated and involved in police and community functions. Officers act as mentors and leaders, guiding and training youth in various aspects of policing. The program builds interest in and reflects a positive image of law enforcement in general.
21. McGruff – this longstanding program came along in 1980 with his motto "Take a bite out of crime." Officers act and present the program, which provides helpful crime prevention advice and enables people to create safer and more caring communities by addressing the causes of crime and violence, and reducing the opportunities for it to occur.
22. Campus Crime Stoppers – a crime reduction program sponsored by the Department, offering the incentive of complete informant anonymity, along with possible cash rewards for information leading to an arrest related to campus crime.
23. Crime Stoppers – Pay Before You Pump Pilot Program – a Crime Stoppers pilot program where stickers are placed at gas pumps indicating that if you witness a gas-run, theft, you may receive a \$50.00 dollar reward for information leading to an arrest while remaining anonymous. The goal is to reduce this type of crime and encourage witnesses to report it.

24. Fax Force a program where the Command's Crime Prevention Officer faxes a weekly information sheet to citizens and area businesses, which provides crime prevention tips, information on crime in the area, and any other pertinent information.
25. Career Days – an officer is matched with students according to interest and shares their job experiences and advice on continuing their education.
26. Home Security Surveys – Crime Prevention Officers make home and business visits to acquaint individuals with the community-policing officer and to educate them on crime prevention. This program provides a sense of security for businesses and citizens, and offers them a certificate that may help to reduce their insurance rate.
27. Community Presentations – the Commands are involved in providing a number of presentations to the public, including safety, DWI, robbery and burglary prevention, and many others.
28. Safety Town – a one-week safety education program provided to children, ages 5 to 6, that teaches them pedestrian and bicycle safety, stranger danger, and water, electrical, gun, and general safety. The program runs for seven weeks during the summer months and educates up to 30 children per week. The program is provided by the Commands in cooperation with Bassett Center - a local shopping center.
29. Speed Hump Program – a pilot program established by the City where the Department works in partnership with the community to reduce speeding on residential streets. The program encourages residents to become actively involved in their neighborhood since the primary requirement for the placement of a "Speed Hump" is an active Neighborhood Watch Program that has been active for over six months.
30. National Night Out – a nationwide event, sponsored locally by the Department, designed to heighten crime and drug prevention awareness, and generate support for and participation in local anti-crime programs, moreover, to strengthen the police-community partnership and send a message to criminals that the neighborhoods are organized and fighting back against crime.
31. Handicap Parking Enforcement – All Commands currently have volunteers that assist with handicap parking enforcement.
32. Montwood Wellness Center – The department has taken a proactive approach to juvenile issues through representation on the board of the Montwood Wellness Center. This Center has initiated programs to impact such issues as dropout rates, juvenile sexual assaults and teenage pregnancy.

33. David L. Carrasco Job corps Center – The El Paso Police Department has a strong partnership with the Job Corps. Currently, we are involved in a magnet school type program to expose youth to law enforcement as a potential career. The uniqueness of this program is the coordination between the Police Department, FBI, US border Patrol and the Texas Department of Public Safety.
34. Drop-in Centers – The El Paso Police Department has several drop-in centers located throughout the city, mainly in or near public housing areas. These drop-in centers allow the officers to react with the public in their neighborhood, to address their concerns one-on-one, and to break the barriers between government and the community they serve. These storefronts are also used to bring organizations into the underserved areas to provide services that the citizens may not be able to afford. An example is the use of the University of Texas at El Paso Accounting Department that provides free income tax service for those who do not have adequate transportation or funds.
35. Elderly and Domestic Abuse Prevention Unit– The El Paso Police Department has a centralized team to respond to Domestic Violence and a Domestic Abuse Response Team (DART). These units are designed to handle the problem of domestic violence in our community. They train citizens, officers, coordinate resources to victims, etc. in an attempt to reduce violence in the home.
36. Multi-Agency Referral System (MARS) – The MARS program targets high school students to ensure access to police services as well as other community agencies to address various student issues and concerns.
37. “Doughnuts with a Cop” - A community outreach program that takes place in economically disadvantaged housing communities.
38. “Shattered Dreams” – A program that simulates a fatal automobile crash and helps to teach students to avoid drinking and driving.
39. Respect for Law Academy – which gives insight to middle school students as to what law enforcement officers have to deal with on a daily basis.

III) Responding to the Texas Racial Profiling Law

a) Institutional Policy on Racial Profiling (definition/prohibition of racial profiling)

3-202. PATROL PROCEDURES.

3.202.01 RACIAL AND ARBITRARY PROFILING. To comply with the requirements of Article 2.131 through 2.136, Texas Code of Criminal Procedure, which prohibits Texas peace officers from engaging in racial profiling, officers are strictly prohibited from engaging in racial profiling. The prohibition against racial profiling does not preclude the use of race, ethnicity, or national origin as factors in a detention decision by a peace officer. Race, ethnicity, or national origin may be legitimate factors in such a decision when used as a part of a description of a suspect or witness for whom a peace officer is searching.

A. Definitions.

1. Racial Profiling: a law enforcement-initiated action, such as a traffic stop, a detention, a search, issuance of a citation, or an arrest, based on an individual's race, ethnicity, or national origin rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity. Racial profiling pertains to persons who are viewed as suspects or potential suspects of criminal behavior. The term is not relevant as it pertains to witnesses, complainants, persons needing assistance, or other citizen contacts.
2. Race or Ethnicity: of a particular descent, including Caucasian, African, Hispanic, Asian, or Native American descent.
3. Pedestrian Stop: an interaction between a peace officer and an individual who is being detained for the purposes of a criminal investigation in which the individual is not under arrest.
4. Traffic Stop: the stopping of a motor vehicle by a peace officer for an alleged violation of law or ordinance regulating traffic.

3-202.02 Officer Initiated Contact Datasheet. Officers, on or off-duty, who stop motor vehicles for an alleged violation of a law or ordinance regulating traffic or who stop a pedestrian for any suspected offense will comply with the following:

- A. The information required on the Officer-Initiated Contact Datasheet will be completed for each person detained or arrested. In the event that several people are present when making a pedestrian or traffic stop,

information will be captured only for those who are contacted, questioned or searched. The form will record the following information:

1. Person's gender
2. Person's race or ethnicity, as stated by the person or, if the person does not state their race or ethnicity, the officer will state to the best of his ability the person's race or ethnicity
3. The traffic law, ordinance or suspected offense alleged to have been violated
4. Whether a search was conducted and if person consented to search
5. Whether contraband was discovered and if so what type
6. Whether probable cause for search existed and the facts for the probable cause of search
7. Whether officer issued a warning, citation or arrested suspect and a statement of the offense
8. Street address or approximate location of the stop

B. Datasheet Compilation

1. Datasheets will be turned in to supervisors at the end of each day's shift. Off-duty officers will return datasheets to their Police Department supervisor on the day they return to regular duty, not their outside employer.
2. Supervisors will cross check the numbers of Officer-Initiated Contact Datasheets with the officer's Daily Activity Report to assure the proper number of datasheets are completed. Supervisors will ensure that all information has been supplied and that forms are in good condition. If a form is in questionable condition, the supervisor will have the officer complete a new form and ensure that the information is accurately transcribed. Supervisors will forward off-duty sheets to Planning, Research and Development for record keeping.
3. Approved datasheets will be sent via interoffice mail to the Records Department for processing. Completed forms will be archived for 3 years by the Records Department.

C. Training

1. The academy will conduct annual training with sworn personnel on subjects that include, but are not limited to profiling, cultural diversity, interaction with citizens, policy, ethics and related topics.
2. Training may be conducted through in-service, special courses, or roll-call training.
3. Participation in training will be documented and recorded in each officer's training record.
4. All officers will complete racial profiling training prior to the second anniversary of the date the officer is licensed as a peace officer or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.

D. Reporting Requirements

1. The information collected shall be compiled in an annual report covering the period January 1 through December 31 of each year, and shall be submitted to City Council no later than March 1 of the following year.
2. The annual report shall not include identifying information about any individual stopped or arrested.
3. The annual report will not include identifying information about any peace officer involved in a stop or arrest.

E. Investigating Complaints

1. In investigating a complaint alleging racial profiling, the Chief of Police shall seek to determine if the officer who is subject of complaint has engaged in a pattern of racial profiling that includes multiple acts constituting racial profiling for which there is no reasonable, credible explanation based on established police and law enforcement procedures. A single act constituting racial profiling may not be considered a pattern of racial profiling, and shall not be grounds for corrective action.
2. Citizens may file complaints against any Officer at any Department facility or at the Professional Responsibility Unit (PRU) office. All complaints of racial profiling lodged against an Officer will be investigated by the PRU office fairly and objectively to determine the validity of such complaints. Disciplinary or corrective action will be established in a timely and consistent manner in accordance with

state laws, local ordinances and the City of El Paso's Civil Service Rules and Regulations.

F. Public Education

1. The Department through its philosophy of Community Policing will provide information to the general public regarding racial profiling policies and procedures, to include the complaint process, by actively addressing the issue in regular Regional Command community meetings, Citizen's Advisory board meetings, the mass media, and by routine officer/citizen contacts.

G. Video Policy

1. All Officers will follow established procedures for the use of Mobile Video Recorder (MVR) equipment. Supervisors, on a bimonthly basis, will review videotapes and recordings to assist in periodic assessment of the Officer's performance and to determine whether the equipment is being fully and properly used. Supervisors will also ensure that repairs and replacement of damaged or nonfunctional MVR equipment is performed. (The Department's policy and procedure relating to MVR may be reviewed on Page 24 of this report.)

b) Implementation of Complaint Process Addressing Allegations of Racial Profiling Practices

The information contained in this section has been disseminated to the public as part of an educational campaign aimed at informing community members of the complaint process relevant to violations of the Texas Racial Profiling Law.

This information was disseminated in both English and Spanish (when necessary) in the following manner:

- Information was repeatedly addressed to both the Citizen and Youth Advisory Boards at each Regional Command.
- PAR and SRO officers explain the complaint process during public presentations.
- Each command does “quality control surveys” where citizens who come into contact with police are contacted to determine if the interaction between the citizen and the officer was in keeping with the mission of the El Paso Police Department. Citizens who have complaints are informed of the proper process.
- Information on the complaint process is disseminated through the department’s fax force program.
- When the Racial Profiling Law first took effect and our policy adopted and released to several groups in regard to open records requests, both the print and news media ran stories that included the complaint process for individuals who believe they were racially profiled.
- The complaint process is on the El Paso Police Department Web site.
- The complaint process has been printed on pamphlets and disseminated in the public areas of the Regional Commands and Headquarters facility.
- We will continue with this education process in 2005 to ensure that this information is available to the public.
- The Chief has met with the president of the El Paso chapter of the NAACP and both agencies continue to maintain open communications and develop a continuing dialog.
- The department issued a press release on the acceptance by City Council of the 2004 Racial Profiling report on February 17, 2004.

2-601. GENERAL-Supervisors of this Department will take appropriate action whenever they learn of any violation or deviation of the Civil Service Rules, the Code of Ethics, policies and procedures, or of any other orders or directives issued by the Chief of Police. All incidents needing documentation will be noted in the Supervisor's Daily Log. Further documentation may be made by the following means:

2-601.01 PRELIMINARY INFORMATION DOCUMENT (PID). This instrument is used to document events or circumstances which indicate a possible need for disciplinary or corrective action or further investigation. Only Captains, Commanders and Division managers can authorize the generation of a PID.

2-601.02 DELETED

2-601.03 POSSIBLE ADMINISTRATIVE ACTIONS. At the discretion of the Chief of Police, the following measures may be imposed for the betterment of the Department and its employees. This list is not complete, but may be used as a guide.

1. Training.
2. Supervised field observations for a designated period.
3. Professional counseling (Officers only, per Contract).
4. Fitness for duty evaluation.
5. Reassignment not resulting in a change in pay status.

2-602. ADMINISTRATIVE INVESTIGATION. Administrative investigations may be initiated by Captains, Commanders, Division Managers, the Shooting Review Team, or the Professional Responsibility Unit. Incidents that are determined to be complex, involve discrimination or sexual harassment, involve employees from different units or shifts, or are of criminal or serious nature will be investigated by the Professional Responsibility Unit or, in the case of a shooting incident, by the Shooting Review Team in conjunction with Professional Responsibility Unit.

2-602.01 INVESTIGATION INDICATED. If, upon review of the daily logs, Captains, Commanders, or Division Managers determine a possible need for disciplinary or corrective action, they will direct the employee's supervisor to prepare a Preliminary Information Document and the appropriate administrative statements. All documentation will be submitted to the Captain, Commander, or Division Manager for the necessary action.

A. Division Level. When investigation is made at the Division level, a copy of the Preliminary Information Document and supporting documentation will be placed in the employee's divisional file. All original documentation will be forwarded to the Internal Affairs Division for record keeping, final disposition and distribution.

B. If further investigation by Professional Responsibility Unit is necessary, the Preliminary Information Document and all supporting documentation will be forwarded to the Professional Responsibility Unit.

2-602.02 CONDUCTING ADMINISTRATIVE INVESTIGATIONS. The following guidelines will be followed when conducting administrative investigations of Department employees. Professional Responsibility Unit investigations of Officers will be conducted in accordance with applicable provisions of the Contract.

A. Confidentiality Warnings. Upon first notice to employees, and prior to taking statements for an administrative investigation, the supervisor or Internal Affairs Investigator will issue a Confidentiality Order. This order prohibits the employee from talking about the case until disposition is made.

1. Civilian Employees will receive and sign a Civil Service Confidentiality Order.
2. Officers will receive and sign a Contract Confidentiality Order.

B. Interviews. The most involved portion of a personnel complaint investigation are the interviews. Investigators must determine who will be interviewed and the order in which the interviews will take place. A normal sequence is:

1. Complainant.
2. Civilian (non-employee) witnesses.
3. Other Department employees.
4. Other involved agency employees.
5. The accused employee.

C. Investigators. When more than one investigator is involved in the interview process, roles should be clearly defined and strictly followed. One investigator will be designated as the primary investigator. A second investigator may only provide support and guidance to the primary investigator during the interview.

D. Adjudication Disposition. The disposition classifications below will be used in the adjudication report. Each separate allegation will be classified individually.

****NOTE*** This subsection does not apply to SRT administrative investigations.*

1. Unfounded. The allegation concerned an act by a Department employee which did not occur.
2. Not Sustained. The investigation failed to produce a preponderance of evidence to either prove or disprove the allegation.
3. Exonerated. The allegation did, in fact, occur but the actions of the Department employee were legal, justified, proper, and in conformity with Department policies and procedures.
4. Sustained. The investigation produced a preponderance of evidence to substantiate the allegation of an act which was determined to constitute misconduct.

2-602.03 POSSIBLE DISCIPLINARY ACTIONS. The following list of actions may be taken by the Department. This list is not complete, but may be used as a guide.

- A. Oral reprimand.
- B. Written reprimand.
- C. Suspension.
- D. Demotion in rank or job classification.
- E. Termination.

2-602.04 DISCIPLINARY AUTHORITY. The following describes the authority each level of command has in imposing disciplinary actions upon employees. Investigations may be conducted at any level, however, disciplinary action is limited by authority level.

- A. Sergeants and First Line Supervisors. Sergeants and first line supervisors may recommend the need for an administrative investigation by documenting an incident in their daily log, but may not make recommendations for disciplinary action.
- B. Lieutenants and Mid-Level Managers. Lieutenants and mid-level managers have the additional authority to recommend case disposition. They do not have the authority to recommend disciplinary action.
- C. Captains, Commanders, and Division Managers. Captains, Commanders, and Division Managers are primarily responsible for recommending disciplinary actions up to ten (10) days suspension with loss of pay.
- D. Deputy/Assistant Chiefs, and Executive Level Managers. Deputy and Assistant Chiefs and Executive Managers may recommend disciplinary action beyond ten (10) days suspension with loss of pay. They may also make recommendation to the Chief of Police for termination.
- E. Chief of Police. The Chief of Police will approve and sign all disciplinary decisions. Termination of employees will be decided only by the Chief of Police. At the Chief's discretion, a Disciplinary Board may be convened to hear more complicated cases.

2-603. DISCIPLINE PROCEDURES. The following procedures apply to employee discipline.

2-603.01 ROUTING. All documents forwarded to Professional Responsibility Unit will be routed through the chain of command. Once disposition of a case is determined, Professional Responsibility Unit will administer any disciplinary action and maintain record of the case.

2-603.02 EMPLOYEE APPEALS. Employees will be informed of the disposition of their case. Employees may appeal suspensions, demotions or terminations within thirty (30) days of receipt of notice of the decision. Officers may appeal suspensions and terminations as prescribed by the Contract and elect to go before the Civil Service Commission or, through the Association, elect to use an arbitrator. Civilian employees may appeal suspensions or terminations through City Personnel to the Civil Service Commission.

2-603.03 GRIEVANCES. Formal grievances may be filed regarding any order which is believed to violate the rights granted employees by the City Charter, excluding all disciplinary matters. Additionally, Officers may grieve disputes involving the application, interpretation or enforcement of the Contract pursuant to the procedures established therein.

2-604. SUSPENSION AND ADMINISTRATIVE LEAVE WITH PAY. Officers who are serving a suspension from duty will have their police powers suspended. Officers placed on administrative leave with pay will follow the procedures established below.

2-604.01 POLICE ACTION SUSPENDED. Officers suspended for any period of time will not take any police actions nor have any police authority during the suspension. If the suspension is for four or more days, Commanders will collect, and Officers will relinquish, their badge and Department identification.

2-604.02 EMPLOYEES UNDER ADMINISTRATIVE LEAVE WITH PAY. Employees placed on administrative leave with pay will be assigned to day shift and will report by telephone to their commander at least twice during the shift. Employees will not be assigned to any particular location. Employees will not be required to remain at their homes while on administrative leave, but will be available to report to work, in uniform if applicable, on one hour's notice.



PROFESSIONAL RESPONSIBILITY UNIT

2211 E. Missouri, Suite W-205

(915) 544-7633

Police officers are granted a public trust that requires that they consistently demonstrate the highest degree of integrity. With this in mind, The El Paso Police Department has established Codes of Conduct which set forth the standards requiring officers to maintain a high level of personal and official behavior in order to command the respect and confidence of the public.

When members of the public believe that a police officer with the El Paso Police Department has engaged in misconduct, to include a violation of racial profiling laws, they may report this misconduct at any Police Department facility or at the offices of the Professional Responsibility Unit located at 2211 E. Missouri, Suite W-205.

The function of the Professional Responsibility Unit of the El Paso Police Department is to investigate alleged violations of departmental policies and procedures by members of the Department.

This office conducts only Administrative investigations and any statement taken, or allegation made in this office will have no effect on any criminal proceedings pending against you. The complete investigation and final disposition of a case is all handled within the El Paso Police Department. All information obtained and found during the course of the investigation is kept confidential to the extent allowed by law. This office does not investigate criminal allegations. It normally takes the investigators approximately ninety (90) days to completely investigate each case.

After the case has been completed, it is forwarded to the Office of the Chief of Police for review and disposition. Once the final disposition is made on the case you will be notified, in writing. Every member of the El Paso Police Department has a right to appeal disciplinary action taken against him/her. You may be requested or subpoenaed to testify, in person, at a Disciplinary or Appeal Hearing. This appearance will not be mandatory, but may affect the outcome of the hearing.



PROFESSIONAL RESPONSIBILITY UNIT

2211 E. Missouri, Suite W-205

(915) 544-7633

Oficiales de policia han sido dotados con una responsabilidad pública que requiere que ellos consistentemente demuestren el mas alto grado de Integridad. Con esto en mente, el Departamento de Policia de El Paso ha establecido Códigos de Conducta que implantan una norma de conducta requiriendo que los oficiales mantengan el mas alto nivel de comportamiento personal y oficial a fin de obtener el respeto y confianza de el público.

Cuando miembros de el público creen que un oficial del Departamento de la Policia de El Paso se ha comportado de una manera indeseable, incluyendo la comision de alguna violacion de las leyes de perfil racial, estos pueden reportar este mal comportamiento a qualquier agencia de la policia o a las oficinas de Unidad de Responsabilidad Profesional, ubicada en el 2211 E. Missouri, despacho W-205.

La funcion de la Unidad de Responsabilidad Profesional de el Departamento de la Policia de El Paso es de investigar supuestas alegaciones de violacion de politica o procedimientos por miembros de el Departamento.

Esta oficina conduce unicamente investigaciones administrativas, y qualquier declaracion tomada, o alegacion hecha en esta oficina no tiene efecto alguno en cualquier procedimiento criminal que estuviera pendiente contra usted.

La investigacion completa y disposicion final de cada caso es hecha dentro de el Departamento de la Policia de El Paso. Toda informacion obtenida y encontrada durante el curso de la investigacion es mantenida confidencial al grado permitido por la ley. Esta oficina no hace investigaciones de alegaciones criminales. Normalmente, les toma aproximadamente noventa (90) dias a nuestros investigadores para investigar completamente cada caso.

Despues de que el caso esta completo, este es mandado a la oficina de el jefe de policia para revision y disposicion. Una vez que ha sido hecha la disposicion final en el caso, usted sera notificado por escrito. Cada miembro de el Departamento de Policia de El Paso tiene el derecho de apelar la accion disciplinaria tomada en contra de el/ella. Pudiera ser que usted sea citado, o ordenado a testigar, en persona, ante algun jurado disciplinario o de apelacion en la accion disciplinaria tomada contra el oficial.

Esta apariencia suya, aunque no mandatoria, pudiera afectar el resultado de la audiencia.

c) Training Administered to El Paso Police Department Personnel

In compliance with the Texas Racial Profiling Law, the El Paso Police Department has asked that all its officers adhere to all Texas Commission on Law Enforcement Officer Standards and Education (TECLEOSE) training and the Law Enforcement Management Institute of Texas (LEMIT) requirements as mandated by law.

All officers from the El Paso Police Department have been asked to complete a TCLEOSE training and education program on racial profiling not later than the second anniversary of the date the officer is licensed under Chapter 1701 of the Texas Occupations Code or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier. A person who on September 1, 2001, held a TCLEOSE intermediate proficiency certificate, or who had held a peace officer license issued by TCLEOSE for at least two years, will complete a TCLEOSE training and education program on racial profiling not later than September 1, 2003. As of this date, we have trained 1,354 officers. Only one officer has not received the training due to being on military leave.

918 officers completed online Cultural Diversity training as mandated by TCLEOSE between January 1, 2004 and December 31, 2004. The remaining 203 officers have until August 31, 2005 to complete the training under TCLEOSE regulations.

Chief Richard Wiles attended the racial profiling course held at the El Paso Police Academy on June 28, 2002. This fulfills the training requirement as specified in the Education Code (96.641) of the Texas Racial Profiling Training law.

Racial Profiling



Course Number 3256

Texas Commission on Law Enforcement

September 2001

Racial Profiling 3256

Instructor's Note:

You may wish to teach this course in conjunction with Asset Forfeiture 3255 because of the related subject matter and applicability of the courses. If this course is taught in conjunction with Asset Forfeiture, you may report it under Combined Profiling and Forfeiture 3257 to reduce data entry.

Abstract

This instructor guide is designed to meet the educational requirement for racial profiling established by legislative mandate: 77R-SB1074.

Target Population:	Licensed law enforcement personnel in Texas
Prerequisites:	Experience as a law enforcement officer
Length of Course:	A suggested instructional time of 4 hours
Material Requirements:	Overhead projector, chalkboard and/or flip charts, video tape player, handouts, practical exercises, and demonstrations
Instructor Qualifications:	Instructors should be very knowledgeable about traffic stop procedures and law enforcement issues

Evaluation Process and Procedures

An examination should be given. The instructor may decide upon the nature and content of the examination. It must, however, sufficiently demonstrate the mastery of the subject content by the student.

Reference Materials

Reference materials are located at the end of the course. An electronic copy of this instructor guide may be downloaded from our web site at <http://www.tcleose.state.tx.us>.

Racial Profiling 3256

1.0 RACIAL PROFILING AND THE LAW

1.1 UNIT GOAL: The student will be able to identify the legal aspects of racial profiling.

1.1.1 LEARNING OBJECTIVE: The student will be able to identify the legislative requirements placed upon peace officers and law enforcement agencies regarding racial profiling.

Racial Profiling Requirements:

Racial profiling	CCP 3.05
Racial profiling prohibited	CCP 2.131
Law enforcement policy on racial profiling	CCP 2.132
Reports required for traffic and pedestrian st	CCP 2.133
Liability	CCP 2.136
Racial profiling education for police chiefs	Education Code 96.641
Training program	Occupations Code 1701.253
Training required for intermediate certificate	Occupations Code 1701.402
Definition of "race or ethnicity" for form	Transportation Code 543.202

- A. Written departmental policies
 - 1. Definition of what constitutes racial profiling
 - 2. Prohibition of racial profiling
 - 3. Complaint process
 - 4. Public education
 - 5. Corrective action
 - 6. Collection of traffic-stop statistics
 - 7. Annual reports
- B. Not prima facie evidence
- C. Feasibility of use of video equipment
- D. Data does not identify officer
- E. Copy of complaint-related video evidence to officer in question
- F. Vehicle stop report
 - 1. Physical description of detainees: gender, race or ethnicity
 - 2. Alleged violation
 - 3. Consent to search
 - 4. Contraband
 - 5. Facts supporting probable cause
 - 6. Arrest
 - 7. Warning or citation issued
- G. Compilation and analysis of data
- H. Exemption from reporting – audio/video equipment
- I. Officer non-liability
- J. Funding
- K. Required training in racial profiling
 - 1. Police chiefs

2. All holders of intermediate certificates and/or two-year-old licenses as of 09/01/2001 (training to be completed no later than 09/01/2003) – see legislation 77R-SB1074

1.1.2 LEARNING OBJECTIVE: The student will become familiar with Supreme Court decisions and other court decisions involving appropriate actions in traffic stops.

- A. Whren v. United States, 517 U.S. 806, 116 S.Ct. 1769 (1996)
 1. Motor vehicle search exemption
 2. Traffic violation acceptable as pretext for further investigation
 3. Selective enforcement can be challenged
- B. Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868 (1968)
 1. Stop & Frisk doctrine
 2. Stopping and briefly detaining a person
 3. Frisk and pat down
- C. Other cases
 1. Pennsylvania v. Mimms, 434 U.S. 106, 98 S.Ct. 330 (1977)
 2. Maryland v. Wilson, 117 S.Ct. 882 (1997)
 3. Graham v. State, 119 MdApp 444, 705 A.2d 82 (1998)
 4. Pryor v. State, 122 Md.App. 671 (1997) cert. denied 352 Md. 312, 721 A.2d 990 (1998)
 5. Ferris v. State, 355 Md. 356, 735 A.2d 491 (1999)
 6. New York v. Belton, 453 U.S. 454 (1981)

2.0 RACIAL PROFILING AND THE COMMUNITY

2.1 UNIT GOAL: The student will be able to identify logical and social arguments against racial profiling.

2.1.1 LEARNING OBJECTIVE: The student will be able to identify logical and social arguments against racial profiling.

- A. There are appropriate reasons for unusual traffic stops (suspicious behavior, the officer's intuition, MOs, etc.), but police work must stop short of cultural stereotyping and racism
- B. Racial profiling would result in criminal arrests, but only because it would target all members of a race randomly – the minor benefits would be far outweighed by the distrust and anger towards law enforcement by minorities and the public as a whole
- C. Racial profiling is self-fulfilling bad logic: if you believed that minorities committed more crimes, then you might look for more minority criminals, and find them in disproportionate numbers
- D. Inappropriate traffic stops generate suspicion and antagonism towards officers and make future stops more volatile – a racially-based stop today can throw suspicion on tomorrow's legitimate stop
- E. By focusing on race, you would not only be harassing innocent citizens, but overlooking criminals of all races and backgrounds – it is a waste of law enforcement resources

3.0 RACIAL PROFILING VERSUS REASONABLE SUSPICION

3.1 UNIT GOAL: The student will be able to identify the elements of both inappropriate and appropriate traffic stops.

3.1.1 LEARNING OBJECTIVE: The student will be able to identify elements of a racially-motivated traffic stop.

- A. Most race-based complaints come from vehicle stops, often since race is used as an inappropriate substitute for drug courier profile elements
- B. "DWB" – "Driving While Black" – a nickname for the public perception that a Black person may be stopped solely because of their race (especially with the suspicion that they are a drug courier), often extended to other minority groups or activities as well ("Driving While Brown," "Flying While Black," etc.)
- C. A typical traffic stop resulting from racial profiling
 1. The vehicle is stopped on the basis of a minor or contrived traffic violation which is used as a pretext for closer inspection of the vehicle, driver, and passengers
 2. The driver and passengers are questioned about things that do not relate to the traffic violation
 3. The driver and passengers are ordered out of the vehicle
 4. The officers visually check all observable parts of the vehicle
 5. The officers proceed on the assumption that drug courier work is involved by detaining the driver and passengers by the roadside
 6. The driver is asked to consent to a vehicle search – if the driver refuses, the officers use other procedures (waiting on a canine unit, criminal record checks, license-plate checks, etc.), and intimidate the driver (with the threat of detaining him/her, obtaining a warrant, etc.)

3.1.2 LEARNING OBJECTIVE: The student will be able to identify elements of a traffic stop which would constitute reasonable suspicion of drug courier activity.

- A. Drug courier profile (adapted from a profile developed by the DEA)
 1. Driver is nervous or anxious beyond the ordinary anxiety and cultural communication styles
 2. Signs of long-term driving (driver is unshaven, has empty food containers, etc.)
 3. Vehicle is rented
 4. Driver is a young male, 20-35
 5. No visible luggage, even though driver is traveling
 6. Driver was over-reckless or over-cautious in driving and responding to signals
 7. Use of air fresheners
- B. Drug courier activity indicators by themselves are usually not sufficient to justify a stop

3.1.3 LEARNING OBJECTIVE: The student will be able to identify elements of a traffic stop which could constitute reasonable suspicion of criminal activity.

- A. Thinking about the totality of circumstances in a vehicle stop
- B. Vehicle exterior
 1. Non-standard repainting (esp. on a new vehicle)
 2. Signs of hidden cargo (heavy weight in trunk, windows do not roll down, etc.)
 3. Unusual license plate suggesting a switch (dirty plate, bugs on back plate, etc.)
 4. Unusual circumstances (pulling a camper at night, kids' bikes with no kids, etc.)
- C. Pre-stop indicators

1. Not consistent with traffic flow
 2. Driver is overly cautious, or driver/passengers repeatedly look at police car
 3. Driver begins using a car- or cell-phone when signaled to stop
 4. Unusual pull-over behavior (ignores signals, hesitates, pulls onto new street, moves objects in car, etc.)
- D. Vehicle interior
1. Rear seat or interior panels have been opened, there are tools or spare tire, etc.
 2. Inconsistent items (anti-theft club with a rental, unexpected luggage, etc.)

Resources

Proactive Field Stops Training Unit – Instructor's Guide, Maryland Police and Correctional Training Commissions, 2001. (See Appendix A.)

Web address for legislation 77R-SB1074:

<http://tlo2.tlc.state.tx.us/tlo/77r/billtext/SB01074F.htm>

Appendix A

Maryland Training Unit on Proactive Field Stops

Law Enforcement Training Course

TRAINING UNIT

PROACTIVE FIELD STOPS

INSTRUCTOR GUIDE



Developed by the
Maryland Police and Correctional
Training Commissions

NOTICE

Due to the dynamic nature of law enforcement and the impact of court decisions and statutory changes on police and correctional operations, it is important that each department review this information to verify that it is consistent with current federal, state and local law and regulations, and with departmental policy and procedure. This information is not intended to substitute for the advice of legal counsel. You should speak with your legal advisor about the sufficiency of your department's manual, policy, curriculum, and training program. This material should not be used as the sole basis for compliance with any law or regulation, and departments should not rely on this material as a legal defense in any civil or criminal action. The Police & Correctional Training Commissions have compiled and distributed this information as a guide for the individual departments, and are not responsible for the content and delivery of this material by other departments

TRAINING UNIT

Proactive Field Stops

TRAINING OBJECTIVES:

Examine the phenomenon of alleged racial profiling by law enforcement, particularly the tactic of using traffic stops as a pretext to investigate suspected criminal activity.

Review the constitutional issues surrounding the use of police field stops to deter crime and apprehend known criminal offenders, including relevant US Supreme Court and Maryland decisions.

Discuss effective techniques for conducting lawful field stops of suspects operating motor vehicles and suspects on the street.

MPTC OBJECTIVES:

None identified at this time.

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<p style="text-align: center;"><u>TRAINING UNIT</u> Proactive Field Stops</p>

I. Racial Profiling – A Background

“To stop and search an individual

simply because of his race, gender,

or economic level is unlawful as well

*as unconstitutional, and should not be
tolerated in any police organization.”*

Superintendent David Mitchell
Maryland State Police

- A. In its broadest sense, racial profiling by law enforcement officers is the practice of some officers to stop, search, and investigate minorities, both on the street and while traveling in vehicles, based solely on their racial or ethnic background, rather than on their actions.
- B. The perceived police practice of stopping and searching vehicles operated by African Americans, especially those that are suspected of being drug couriers, had been termed “Driving While Black,” or “DWB.”
- C. “DWB” has likewise been expanded to mean “Driving While Brown,” —the ethnic profiling of Hispanic-Americans.
- D. This perception by some African Americans that they are unfairly and unjustly singled out by police as criminal suspects has been widely publicized by the national and local media.
- E. Racial profiling is any police street or traffic stop, based solely on racial or ethnic stereotypes that has the end result of treating minorities significantly differently than non-minority citizens. This volatile issue can effectively polarize police agencies and the communities they serve.
- F. The majority of complaints alleging racial profiling follow vehicle stops by police.
- G. These vehicle stops are usually the result of police drug interdiction efforts and they occur typically along interstate highways that are considered to be major drug transport corridors.
- H. In the Mid-Atlantic area, Interstate-95 has been the source of the majority of complaints about this practice, particularly those sections of I-95 in Maryland.

I. Typically, the traffic stop is for a traffic violation, which is actually a pretext for the purpose of conducting a search of the vehicle for drugs or other narcotic-related contraband.

J. Allegations of racial profiling during a vehicle stop may roughly follow this pattern:

1. On the basis of a real or contrived traffic violation, the suspect vehicle is stopped by the police.
2. The driver and occupants are subjected to verbal inquiries that are not necessarily related or pertinent to the purported traffic violation that was the basis for the stop.
3. The driver and other occupants are ordered out of the vehicle.
4. The police will visually check all observable areas of the interior of the vehicle.
5. Based on their questioning of the occupants and their visual observation of the vehicle, the police, acting on their perception of a drug courier profile—which is actually an investigative template—may detain the driver and occupants by the roadside for further investigation.
6. The driver is requested to accede to a consent search of the vehicle.
7. If consent to search the vehicle is denied, the police will usually conduct a peripheral investigative (and delaying) tactic, such as summoning a drug-detection dog to the scene, or conducting time-consuming wanted and criminal record checks on the vehicle and all occupants.
8. The key element in this process is the consent search, since this is the means by which the police will successfully accomplish a drug interdiction effort.
9. If the driver refuses to consent to a search of the vehicle, intimidation may be applied. The police may threaten to detain the driver (for several hours) until they obtain a search warrant, or otherwise allude to some other delaying or harassing action, even intimating the arrest of occupants and the towing and impounding of the vehicle.

K. Drug courier profiles originated with the Drug Enforcement Administration (DEA) in the early 1970's, and were originally used at airports, train stations, and bus depots. The characteristics of DEA courier profiles were behavioral-based:

- Unusual nervousness of suspect
- Payment of ticket in cash
- Traveling to or from a drug-suspect destination
- Traveling under an alias
- Carrying little or no luggage
- Immediate use of telephone after destination arrival
- Leaving a false call-back phone number with ticket agent

- Excessive travel to drug-source or distribution locales
- L. In 1986, the DEA instituted “Operation Pipeline,” a highway drug interdiction program, which has since trained state and local police agencies in the use of pretext traffic stops in order to find drugs in vehicles. The techniques suggested by the DEA include the following clues, or indicators of highway drug smuggling:
- Use of car air fresheners to discourage drug-sniffing canines
 - Overt signs of driving long hours without stop, such as food wrappers and beverage cans in the car, days-old facial beards, and disheveled clothing
 - Use of rental vehicles
 - Driver is a young male, usually 20-35 years; the age group which experience has shown to be the most likely drug courier.
 - No visible luggage in the vehicle
 - Driver attempted to avoid or elude the police by operating either recklessly, or even overly-cautiously
 - Unusual driver nervousness and anxiety
- M. The DEA and local police agencies vigorously deny that race or ethnicity is a factor in drug courier profiles. These agencies say they neither teach nor condone racial profiling. If and when it does occur, they infer it is the result of over-zealous or errant officers, the proverbial “bad apples” or “rogue cop” cliché.
- N. Various national civil rights organizations have claimed otherwise. The American Civil Liberties Union (ACLU), has taken the lead in combating alleged racially-biased traffic stops by instituting civil litigation against suspect police agencies, sometimes successfully.
- O. According to the ACLU, pretextual stops are legal deceptions because the alleged traffic violation is not the real reason the officer stopped the car. They note that this becomes obvious when the officer begins to question the occupants and requests consent to search the vehicle. If the stop was really for a traffic violation, they argue, there would be no need for a roadside interrogation or a search.
- P. Pretextual stops that are presumably based solely on the race or ethnicity of the driver and/or passengers, are problematic and are the center of the controversy.
- Q. The US Supreme Court, in *Whren v. United States*, 517 U.S. 806, 116 S. Ct. 1769 (1996), has approved the use of pretextual traffic stops when the officer has observed a traffic violation or has probable cause to believe that criminal activity has been, or is, taking place.
- R. There is an increase in law enforcement agencies being confronted with civil litigation alleging bias traffic stops by their officers, i.e., that their officers are acting primarily in response to a citizen’s race or ethnicity, rather than the citizen’s actions.
- S. While it is appropriate to use race as an identifying characteristic, such as in a description of a wanted suspect, police cannot utilize a criminal profile based solely on race or ethnicity, nor can police use race or ethnicity as the sole basis for a traffic or street stop. To do so is the crux of racial profiling.

- T. Simply put, racial or ethnic bias has no place in progressive law enforcement, regardless of past practices. Traffic stops and street field inquiries must always be performed in a totally impartial, fair-minded, and professional manner. Police cannot effect a pretextual traffic stop solely on the basis of the race of the driver or occupants.

Police cannot ascribe certain behavior traits to a person or a group merely on the basis of their race or ethnic background. If police action is taken, it must be because the person in question has violated a law, not because he or she is of a particular race, ethnicity, or gender. Police can only intervene on the basis of what people do, not on what they look like.

II. Law Enforcement Profiling – Viewpoints

- A. The alleged practice of racial profiling in law enforcement assumes that most drug offenses, particularly distribution and sales, are committed by minorities—predominantly African Americans and Hispanics. It follows, that when police specifically look for drug violations among African Americans and Hispanics, they'll find them in disproportionate numbers.
- B. On the other hand, civil rights activists challenge the claim that criminal profiling is disproportionately committed by young minority males. They rationalize that because police concentrate aggressive crime suppression tactics primarily in minority communities, they will, as expected, stop, investigate, and arrest a disproportionate number of minority men.
- C. Despite this unintended “targeting” effect of profiling, profiling itself is not necessarily a biased concept. Everyone “profiles,” although some might call it stereotyping. We profile when we make a major purchase, pick our friends, or select a school for our kids. Arguably, profiling can be considered an intrinsic part of the human experience.
- D. A profile is a set of characteristics which we arbitrarily ascribe to human behavior or to a social situation, and by which we judge, evaluate, and categorize people, places, and things. These characteristics are derived from our life experiences, and are applied either consciously or subconsciously.
- E. Profiling, as a criminal investigation tool, is naturally derived from our work experiences as law enforcement officers. We intuitively form insights regarding people we professionally interact with, particularly the criminal element. From these associations, we develop a mental profile of certain characteristics that are habitually associated with specific acts of criminal behavior.
- F. Essentially, MO, or methods of operation, and criminal profiles are closely related concepts. Based on a criminal's MO, an experienced and insightful investigator, particularly a specialist, can usually formulate a reasonably accurate profile of the perpetrator.
- G. The heart of the subject controversy is whether law enforcement agencies can legitimately use race, either exclusively, or as one of several factors in devising

criminal profiles for suppression of street crime, and particularly, for drug courier interdiction on highways.

- H. Law enforcement officials, including some African American police chiefs in big cities, defend such tactics as an effective way to target their limited resources on likely lawbreakers. They maintain that profiling is based not on prejudice, but probabilities—the statistical reality that young minority men are disproportionately likely to commit (and be the victim of) crimes.¹
- I. Bernard Parks, Chief, Los Angeles, CA PD, argues that racial profiling is rooted in statistical reality, not racism. Chief Parks, who is African American, vigorously defends the idea that police can legitimately factor-in race when building a profile of a criminal suspect.²
- J. Reuben Greenberg, Chief, Charleston, SC PD, who is also Black, sees the problem as “...white cops who are so dumb that they can’t make a distinction between a middle-class Black and an under-class Black, between someone breaking the law and someone just walking down the street. Black cops too.”³
- K. The International Association of Chiefs of Police (IACP) maintains that proactive police traffic stops, based on legitimately-observed and articulable violations will:
 - Reduce motor vehicle accidents
 - Identify and deter drunk drivers
 - Prevent and abate criminal activity
- L. The IACP notes that studies have shown that more illegal guns are seized through traffic stops than any other enforcement action and that the DEA estimates that 40% of all drug arrests result from traffic stops.
- M. The problem with racial profiling, is that it is not only capricious, it is also inaccurate. It randomly targets all minority men, the innocent as well as the criminal, including many middle-class professionals, based solely on their race or ethnic origin, who are arbitrarily stopped, detained, questioned, and humiliated by this practice, often repeatedly.
- N. Whatever gains law enforcement derives from profiling are vastly outweighed by the negative social costs incurred, principally the erosion of trust and confidence in the criminal justice system in this country by minorities.

III. Constitutional Issues

- A. Two U.S. Supreme Court decisions impact proactive field stops. *Whren v. United States*, 517 U.S. 806, 116 S.Ct. 1769 (1996) for traffic stops, and *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968) for street field interviews.

B. *Whren v. United States*

¹ Jeffrey Goldberg, “What Cops Talk About When They Talk About Race,” *The New York Time Magazine*, 20 June 1999, p. 50-57, 64-65, 88.

² Ibid.

³ Ibid.

1. In *Carroll v. United States*, 267 U.S. 132,153 (1925), the Supreme Court established the motor vehicle search exception to the warrant requirement. This decision permitted police to search a vehicle without a warrant when they had probable cause to believe it contained contraband or evidence of a crime. The mobility of a motor vehicle was a factor in this decision.
2. In 1996, the US Supreme Court held unanimously in *Whren v. United States*, that as a general matter, the decision to stop a motor vehicle is reasonable when the police have probable cause to believe that a traffic violation has occurred.
3. The Court noted in *Whren*, that the constitutional reasonableness of the stop does not depend on “ulterior motives,” “actual motivations,” or “subjective intentions” of the officer making the stop.
4. In effect, the United States Supreme Court approved the practice of police using a traffic violation to justify a traffic stop, even when the purpose of the police was to conduct an investigation into suspected criminal activity not necessarily related to the traffic violation.
5. The Court, while declaring that such stops do not violate the Fourth Amendment, did allow that allegations of unlawful selective enforcement (stops based solely on race or ethnicity) could be challenged civilly under the equal protection clause of the 14th Amendment.

C. *Terry v. Ohio*

1. *Terry v. Ohio* was a landmark Supreme Court case that established the Stop & Frisk doctrine, and outlined the Supreme Court’s guidelines for investigative stops.
 2. The Court held that police may, in certain circumstances, approach and stop a person for the purpose of investigating possible criminal behavior, even when there is not enough probable cause to make an arrest.
 3. Under *Terry*, a police officer may stop and briefly detain a person only if the officer has a reasonable suspicion, supported by articulable facts, that the individual may be involved in criminal activity.
 4. The Court also held that under certain circumstances, the person stopped could also be “frisked,” in that the police could conduct a limited search, or “pat down”, of the individual’s outer clothing to discover the presence of any weapons.
- D. These decisions permitted a wide latitude of individual police discretion in stopping and investigating citizens operating motor vehicles, standing on a corner, or walking down the street.

- E. Obviously, discretion is a critical part of the police task and police work grants front-line officers an enormous amount of autonomy in decision-making. In this sense, police discretion can be defined as making judgmental decisions based on several factors, such as:
- Laws and ordinances
 - Agency policies and procedures
 - Training
 - Job knowledge and experience
 - Personal values and beliefs
 - Work group norms
 - Community mores and customs
- F. Police work, by its very nature, however, can be driven by a single-minded determination to just getting the job done; an ends justify the means attitude. This is personified by the old cop adage: “Do something—take some kind of action—even if it’s the wrong thing.”
- G. When this macho, action-oriented mindset is coupled with wide-ranging autonomous and loosely-supervised discretion, the potential for police abuse of power is considerably magnified.
- H. For some officers, the ends, or objectives, have become so important to them, that they will resort to using borderline means or risky shortcuts to accomplish what *they* think is right and proper, regardless of what the law requires or what their agency policies dictate.
- I. In time, this “ends justify the means” outlook evolves into an “us versus them” approach to law enforcement; a cynical, and self-serving personal assessment of the officer’s relationship to the citizenry he or she is sworn to protect.
- J. Whatever the individual police officer may personally think about crime, criminals, and the law, he or she must perform their duty in a competent and fair-minded manner.
- K. Competence and fairness are the keys to professional police work, especially in confronting citizens in proactive field stops; anything less is ethically and professionally unacceptable.
- L. To validate and justify a traffic stop or a street field interview, you must be capable of reasonably and intelligently articulating, verbally and in writing, the basis for the stop. In order to stop a vehicle, for instance, a police officer must be able to explain that a traffic violation or a criminal act had occurred.
- M. Articulating simply means you must be able to persuasively explain or demonstrate to a court that you had probable cause to stop the vehicle or person in the first place, and that you had reasonable suspicion for any further detaining or investigative actions you conducted following the stop.
- N. Reasonable suspicion is something less than probable cause, but is more than a vague suspicion, an unexplainable hunch, or a “gut feeling.” If you can’t articulate

the reason(s) for the stop, you probably don't have grounds for a legal stop in the first place.

O. Other Significant Cases:

1. *Pennsylvania v. Mimms*, 434 U.S. 106, 98 S.Ct. 330 (1977) A US Supreme Court decision which allows an officer to order the driver out of a vehicle following a lawful traffic stop. The Court decided this case on the basis of officer safety, and cited a study that revealed 30% of police shootings occurred when officers approached suspects in vehicles.
2. *Maryland v. Wilson*, 117 S.Ct. 882 (1997) This US Supreme Court decision permits officers to order passengers out of a vehicle following a lawful traffic stop pending the completion of the stop.
3. *Graham v. State*, 119 MdApp 444, 705 A.2d 82 (1998) Passenger is "seized" for purposes of the 4th Amendment when he is ordered to remain in a car stopped for speeding while officer checks the driver's license and registration. Continued detention of passenger *after* purpose of stop is accomplished is unreasonable, unless there is reasonable, articulable suspicion to justify continuing the detention. (driver's license proved invalid, driver was arrested, yet passenger ordered to remain in the car after driver's arrest to wait 25 minute for a K-9 unit).
4. *Pryor v. State*, 122 Md.App. 671 (1997), *cert. denied* 352 Md. 312, 721 A.2d 990 (1998) (other citations omitted) The 4th Amendment permits the warrantless search of an automobile when there is probable cause to believe that the automobile contains contraband or evidence of criminal activity.. Note: there is no separate "exigency requirement" for the automobile exception to apply; probable cause alone satisfies the automobile exception to the 4th Amendment's warrant requirement. *Maryland v. Dyson*, 527 U.S. 465, 119 S.Ct. 2013 (1999)(*per curiam*).
5. *Ferris v. State*, 355 Md. 356, 735 A.2d 491 (1999) The officer's purpose in an ordinary traffic stop is to enforce the laws of the roadway, and ordinarily to investigate the manner of driving with the intent to issue a citation or warning. Once the initial purpose of that stop has been fulfilled, the continued detention of the car and the occupants amounts to a second detention. Once the underlying basis for the initial traffic stop has concluded, a police-driver encounter which implicates the 4th Amendment is constitutionally permissible only if (1) the driver consents to the continuing intrusion; *or* (2) the officer has, at a minimum, a reasonable, articulable suspicion that criminal activity is afoot. *Ferris v. State*, 355 Md. 356, 735 A.2d 491 (1999). For example:

Officer stopped driver stopped for suspected violations of motor vehicle laws, and continued to briefly detain him after learning that the license and registration were in order. Court found that officer harbored no more than a "hunch" that the driver possessed drugs, and that the continued detention was not independently supported by reasonable suspicion of criminal activity. Therefore, drugs subsequently found in the vehicle were suppressed. *Munaf0 v. State*, 105 Md.App. 662, 660 A.2d 1068 (1995).

Trooper issued driver a traffic citation, returned driver's license and registration documents, and then asked driver if he would mind exiting his vehicle and stepping to the rear to answer a few questions. After several questions, driver admitted to smoking and possessing pot. Pot was suppressed because court found trooper had insufficient reason to justify continuing the encounter after issuing citation. *Ferris v. State*, 355 Md. 356, 735 A.2d 491 (1999).

In meeting the reasonable articulable suspicion standard, it is not enough for officers to articulate reasons why they stopped someone if those reasons are not probative of behavior in which few innocent people would engage. The factors together must serve to eliminate a substantial portion of innocent travelers before the requirement of reasonable suspicion will be satisfied; officers' assertions that a criminal activity is indicated by "garden variety nervousness" must be treated with caution. *Ferris v. State*, 355 Md. 356, 735 A.2d 491 (1999) (other citations omitted).

6. *New York v. Belton*, 453 U.S. 454 (1981) Allowed that police may conduct a full search of a vehicle's passenger compartment incidental to a custodial arrest of an occupant. A full search would not, however, be permitted in those situations where the officer merely issued a citation.

P. Consent Searches:

1. The two prerequisites for a valid consent search of a vehicle (or anything else) are:
 - a. The consent must be given voluntarily, and
 - b. The consent must be given by a person with authority.
2. Because consent is a critical exception to the search by warrant requirement, the State (the police officer) bears the burden of proving both these prerequisites.
3. The consent given must be free and voluntary. Any appearance of coercion may void the search. A arrestee in custody is seen by the courts to be susceptible to duress and coercion and the courts will closely examine the voluntariness of any consent given by an arrested person.
4. Numerous officers on the scene may be perceived as a coercive situation to the average person.
5. Similarly, the person consenting to the search must have the legal authority to grant the consent. Again, it is the investigating officer's responsibility to determine authority. From a legal perspective, control and access count for more than ownership.
6. The consent search of a vehicle:
 - a. Will usually include all containers in the vehicle unless the consenting person exempted consent for those specific items or areas.

- b. The search must be restricted in scope to the area where consent was given. In other words, a person may consent to a search of the passenger area, but not the trunk.
- c. The request for consent must be in the form of a request, not a command.
- d. The person must clearly understand what he or she is agreeing to when their consent is requested.
- e. Police are not constitutionally required to inform citizens that they are free to leave before getting consent to search a motor vehicle, but by not doing so, the constitutional validity of any further investigation would be imperiled. *Ferris v. State*, 335 Md 356, 735 A.2d 491 (1999).
- f. It is recommended, however, that the driver's license and registration be returned, along with any other documents, including a citation, if one was issued, before consent to search is requested, to dispel any impression on the driver's part that he or she is still detained.
- g. The consent to search may be withdrawn at any time during the search.

7. Consent Form or Waiver:

- a. Most law enforcement agencies have a pre-printed form with which a person can sign to indicate that they consented to a search of their vehicle, home, or possessions. Some consent forms are printed in multiple languages.
- b. It would be very beneficial if officers can persuade the responsible individual to read and sign their agency consent form.
- c. Note: It is not unusual for suspects to verbally agree to a consent search, but decline to sign a consent form. If incriminating evidence or contraband is later found, they can then deny that they ever verbally consented to a search.
- d. To preclude this scenario, officers should obtain the verbal consent on tape if an in-vehicle or tape recorder is available. Lacking that, have your back-up officer available to witness the verbal consent agreement.

NOTE: You cannot tape-record in Maryland with the knowledge, and consent, of the other person.

- 8. When conducting a consent search of a vehicle, always have a back-up officer on the scene for your own safety. You cannot conduct an effective vehicle search and keep an eye on someone at the same time.
- 9. The question always arises—why would anyone with something to hide, especially of an illegal nature, willingly allow the police to search their vehicle or possessions? Usually for the following reasons:
 - No. 1 Reason – They believe the stuff (drugs, weapons, stolen property, etc.) will be overlooked.
 - No. 2 Reason – They think their consent will be looked on favorably by the courts. They want to appear cooperative (!)

- If anything incriminating is found, they feel like they can deny any knowledge or personal involvement with it, or otherwise explain it away.
- They think they've been caught and simply give up.

IV. Interpersonal Communication: The Key Ingredient

A. Effective communication skills can be a police officer's most important attribute. This is particularly so when engaged in a traffic stop or a field interview on the street. A few particulars...:

1. Approach the citizen in a open, friendly manner if at all possible. Keep your body language assertive, but non-hostile. If appropriate, introduce yourself.
2. Remember, the key elements in any stop are civility and caution. Sometimes it's difficult to be courteous, but you should always be civil.
3. Tell the citizen why you stopped him. Unless it's patently obvious, the citizen has a right to know and you are professionally obligated to inform him, without any hostility or posturing on your part.
4. Avoid any excessive small-talk or inappropriate questioning.
5. Be brief and to the point. Don't detain anyone beyond the time needed to effect the necessary enforcement action or otherwise clarify a situation.
6. Keep your physical, or non-verbal indicators friendly and neutral, such as your:
 - Eye contact
 - Stance
 - Position of hands
 - Facial expression
7. According to studies conducted in several states, the number one citizen complaint about police officers is the officer's *verbal conduct*. By comparison, only about one-fourth of the complaints filed against police officers dealt with excessive force issues.
8. Speak civilly and in a moderate tone. Citizens seem more concerned about *how* officers speak to them, than by what the officer actually says. Citizens are particularly aggrieved by what they perceive as an officer's gruff or condescending tone of voice.
9. Listen actively. Communication is a two-part process and listening is the other half. Regardless of the type of person you're dealing with, stay focused and concentrate on what they're saying (...or not saying).

10. Sgt. Larry E. Capps, of the Missouri City, Texas PD, has coined a police-citizen interaction dynamic, appropriate for this discussion, which he calls CPR, for:⁴
 - a. Civility – A state of affairs characterized by tolerance, kindness, consideration, and understanding. Civility can be expressed by positive action, or even inaction, as when police officers refrain from over-reacting to verbal outbursts from angry citizens.
 - b. Professionalism – In a broad sense, a concept of excellence or a continual striving for excellence. Its core elements include technical knowledge, moral judgements, a client-oriented practice, considerable discretion given to practitioners, and most importantly, an acknowledgement that policing is a “moral call” profession, in which members are duty bound to respond, whenever and wherever called, regardless of who calls them.
 - c. Restraint – The self-control exercised by officers and their selection of the least intrusive means of accomplishing a legitimate police objective.
11. Some officer best-practices for vehicle stops:
 - a. Always inform the driver of the reason for the stop. Speak slowly and clearly.
 - b. Describe the violation in terms of what the vehicle as doing, not what the driver did. This non-accusatory approach can often enhance officer-driver rapport.
 - c. Ask the driver for the reason for the violation; allow them to vent/offer a stress-reducing explanation.
 - d. Provide instructions. After you obtain their license and registration, tell them that you are going back to your police vehicle to review their documents and advise them to remain in their vehicle.
 - e. Calm any children in the stopped vehicle that may be visibly apprehensive of the presence of a police officer.
12. Again, it's worth repeating: Proactive traffic enforcement that is race or ethnic-based is neither legal: consistent with democratic ideals, values, and principles of American policing; nor in any way a legitimate and defensible public protection strategy.⁴
13. Use the *but/for* test to determine if a stop was based on racial profiling. Say to yourself, *But for this person's race, ethnic heritage, gender, religious or sexual preference, would this driver have had this encounter with me?* If the answer is that they would not, then this was a profile stop and most likely a violation of the person's Constitutional rights.⁵

⁴ Larry E. Capps, “CPR: Career-Saving Advice for Police Officers,” *FBI Law enforcement Bulletin*, July, 1988, Washington, DC, p. 14-18.

⁴ US Department of Justice, NHTSA, *Strengthening the Citizen and Police Partnership at the Traffic Stop: Professionalism is a Two-Way Street*, (Draft) Washington, DC, Aug.14, 2000, p. 8.

⁵ *Ibid.*

V. Proactive Field Stops – Motor Vehicles

- A. You've heard it before; we'll say it again: "There's no such thing as a routine traffic stop." You, the cop, are at a distinct disadvantage during any traffic stop. The driver knows who you are, but you don't know who he is.
- B. All your survival skills and street instincts should be highly focused during a traffic stop, no matter how innocuous or minor it may seem.
- C. Again, you must be able to articulate that a traffic violation or criminal act has occurred in order to stop a vehicle. You cannot stop a car on a whim, or a hunch, or just because you're bored. Discretionary stops are violations of the Fourth Amendment and/or the Fourteenth Amendment because they are arbitrary, intrusive, and discriminatory.
- D. Unless it's an emergency situation, you should not attempt to stop a vehicle if you're in plainclothes and/or operating an unmarked vehicle. Always request a marked patrol vehicle to make the stop for you.

Note

Does this all sound like basic cop stuff you learned back at the Academy and at those dreary and redundant In-Service training sessions? Does a salty, veteran, street cop like yourself need to sit thru all this sermonizing again? Consider this, FBI stats indicate that vehicle stops, nationally, over a 10-year period, account for about 11 percent of all peace officers feloniously killed or assaulted. Are you fairly comfortable with one-in-ten odds, Officer, ...well, are you?

- E. It is not the purpose of this training unit section to tell you how to make a traffic stop. Traffic stop procedures and techniques constitute a training category all their own. We'll cover a few priority highlights that are particularly pertinent for a patrol officer working solo:
 - 1. Select a stop location that will best allow you to deal safely and effectively with the motorist.
 - 2. Position your police vehicle about 30-40 feet behind the stopped vehicle and aim your spotlight at the interior rear mirror of the stopped vehicle
 - 3. Park your police vehicle at an angle to the stopped vehicle and position your vehicle engine block as cover, ...just in case.
 - 4. Notify your dispatcher of the stop location, vehicle description and license—Always!
 - 5. If possible, get a stolen check on the vehicle before approaching. You can obtain a vehicle registration listing later.
 - 6. If circumstances are less than desirable, or if something seems suspicious or amiss, approach the vehicle from the right-hand, or passenger side, especially when:

- You're working solo
 - You're in a rural or deserted area
 - During darkness or in a low-light area
 - More than one person is in the stopped vehicle
 - You're on a high-traffic roadway
7. If the driver or occupants exit the stopped vehicle right after the stop, exit your police vehicle also, especially if they start walking toward you. Be the first out of your vehicle. You don't want to be behind your steering wheel and secured in your seat belt if a fire fight erupts.
 8. Remember: Your initial approach toward the vehicle and your first contact with the driver is the most dangerous stage of a traffic stop. Make your approach slowly and stop and push down on the trunk lid of the stopped vehicle to ensure it is locked. Ask the driver to turn on the dome light.
 9. Ask drivers where they keep their operator's permit and vehicle registration. This will allow you to anticipate the driver's movements and might decrease your reaction time in the event something goes wrong.
 10. Note: Push down on the trunk with your bare hand to mark and leave your handprint on the vehicle, in case the vehicle has to be identified at a later time (...and if you're not around to do it).
 11. Important: If something doesn't look or feel right, back-off and call for a back-up unit, and then wait for it. Trust your instincts.
 12. Never place yourself within arms-reach of the driver or any occupant of the stopped vehicle, and keep your gun hand free. Don't lean into an occupied vehicle for any reason.
 13. Don't walk or position yourself in front of or behind the stopped vehicle, or between your police vehicle and the stopped vehicle, and don't cross in front of your headlights when approaching the stopped vehicle.
 14. Don't allow any unknown suspect to sit in your patrol vehicle, certainly not without being searched. It's a bad practice; they can hear your radio transmissions and there are weapons within easy reach. Just don't do it!
 15. Don't turn your back to any of the occupants of a stopped vehicle, or otherwise allow yourself to be distracted and lose visual contact with a suspect. This is the cardinal rule governing any cop-suspect interaction.
 16. If you have to return to your police vehicle for any reason during a traffic stop, it may be preferable to sit in the right-front seat as this position will offer you greater bail-out options in the event something goes badly wrong.
 17. Be aware of the possibility that the vehicle you stopped was a "load" vehicle carrying valuable contraband and that there may be an "escort" vehicle following or preceding the vehicle you have stopped. Be very observant of

any vehicles that stop on the roadway in front of, or behind the vehicle you have stopped.

VI. Proactive Field Stops – Street Interviews

- A. Maryland has recently ruled that police accosting a citizen is a viable law enforcement tool, as long as the encounter remains voluntary, i.e., that the citizen feels free to walk away. However, a seizure occurs when police indicate that compliance with their requests is required, such that the reasonable person would no longer feel free to walk away. *Reynolds v. State*, 130 Md.App. 304, 746 A.2d 422 (1999), *cert. denied* __Md.__, __A.2d__ (April 13, 2000) (citizen accosted responded to officer's questions, answers yielded no reasonable articulable suspicion or probable cause; ensuing 5-minute wait - in silence - for results of warrant check was excessive and unreasonable because it was unsupported by reasonable suspicion or probable cause).
- B. The street field interview involves a police officer stopping a person or persons on the street, purposely to question, and sometimes to search them, because the officer has a reasonable suspicion that they may have been engaged in criminal activities.
- C. Like their companion traffic stops, however, street field interviews, particularly in high-crime, disadvantaged neighborhoods, have been the cause of minority-community complaints, alleging that the police are indifferent to, and abusive of the civil rights of minority citizens.
- D. Aggressive field stops and searches, especially by quasi-military, police tactical units in minority communities, have created a highly negative and unfavorable image in the media, as witness the recent NYPD street unit encounters with Amadou Diallo and Patrick Dorismond, which resulted in the shooting deaths of both men, under highly questionable circumstances.
- E. On the plus side, street field interviews are a proven and verifiable anti-crime tactic, in that they:
 - Are acceptable to the general public when conducted at moderate levels
 - Deter at-risk individuals from criminal and delinquent behavior
 - Identify and lead to the arrest of known criminal offenders
 - Identify possible witnesses and informants
 - Provide intelligence from both criminal and non-criminal sources
- F. Street field interviews should not be used to harass or intimidate citizens, regardless of their appearance, background, or perceived criminal propensity.
- G. The stop should be reasonably brief to clarify the situation.
- H. The person stopped should be addressed civilly and be advised of the reason for the stop and any subsequent questioning.
- I. The investigating officer may conduct a patting-down (Stop & Frisk) of the suspect's outer garments if the officer has reasonable suspicion to believe that the suspect has a weapon and may pose a physical danger to the officer or to other citizens.

- J. All street field stops should be minimally documented on the officer's note book, run sheet, or daily activity report. A Stop & Frisk should be permanently documented by a field report, accompanied by an agency complaint number.
- K. It is the policy of many departments to issue a receipt to the person being stopped that indicates the purpose and result of the stop.
- L. Appropriate targets for street field stops include, but are not necessarily limited to the following types:
- People who don't fit the surroundings
 - Known criminals and delinquent youths
 - Homeless and "street" people, including suspected addicts
 - Persons acting in a manner indicative of criminal or suspicious behavior
 - Unfamiliar juveniles and minors
 - Loiterers, individually or in groups
- M. Again, caution and civility are the guidelines for a street stop and field interview.
- N. As with traffic stops, the indiscriminate stopping and questioning of citizens is an abuse of police power and is a clear infringement on the personal liberty of citizen to move about freely.
- O. Unlike a traffic stop, probable cause is not required to effect a street stop, merely reasonable suspicion. Reasonable suspicion need not depend solely on the observed actions of the suspect, but the totality of circumstances, which may include the following elements:
- The surrounding neighborhood
 - The time of day
 - Prior knowledge of the individual
 - Information received from another source
- P. Again, the officer must be capable of articulating the elements that led to a valid presumption of reasonable suspicion in the officer's thinking.
- Q. A lawful stop does not alone justify a frisk. The investigating officer must have a reasonable belief that the stopped suspect has a weapon and poses a danger to the officer or to others. You must be able to independently justify the frisk.

VII. Conducting Effective Vehicle Stops

Note:

The preponderance of the material contained in this section was taken from the National Highway Traffic Safety Administration's manual titled: *Conducting Complete Traffic Stops*. This excellent law enforcement resource is available from the US Department of Transportation, 400 7th St. SW, Washington, DC, 20590. It is a highly recommended agency training resource.

A. Traffic and Criminal Enforcement Mutuality:

1. An aggressive and proactive traffic enforcement program can be a highly effective means to both deter and detect criminal activities.
2. Law enforcement doctrine, in many jurisdictions, traditionally regards traffic enforcement as separate from, and often of lesser importance than criminal enforcement, particularly in regard to allocation and prioritization of agency resources.
3. Recent experience in several jurisdictions, both large and small, however, indicates otherwise. Using a proactive approach, supported by intensive training and effective supervision, traffic enforcement has been found to provide a solid base upon which agencies may increase and enhance their criminal enforcement effort.
4. Traffic enforcement is every patrol officer's responsibility, even when there is a specialized agency traffic unit. Patrol officers who know how to properly conduct investigative stops may account for more arrests than specialized anti-crime units.
5. Traffic enforcement can have a meaningful impact against roadway-related crimes, such as:
 - Car thefts and car jacking offenses
 - Fugitives and wanted persons
 - Drivers under the influence of drugs and alcohol
 - Drug transporters
 - Transporting stolen property and contraband (untaxed cigarettes and alcoholic beverages, pirated videotapes)

B. Criminal-Activity Indicators:

1. The traffic stop must be based on a traffic violation or clear and articulable probable cause that the occupants of the subject vehicle are engaged in a criminal activity. Any traffic stop is a legal stop if there has been an observed violation of the law.
2. There are certain indicators, both verbal and non-verbal, that law enforcement officers, from experience, have identified as indicative or strongly suggestive of criminal activity by individuals operating vehicles. There are also vehicle appearance clues that suggest that the vehicle in question may be used in connection with unlawful purposes.
3. The mere presence of one or even a few indicators does not necessarily signify that the vehicle or the occupants are engaged in criminal behavior. They do, however, form part of the totality of circumstances on which the investigating officer can use as legal justification to further detain and investigate the vehicle and its occupant(s).

C. Pre-Stop Indicators:

1. Vehicle is conspicuously driven too fast or too slow; not operated consistent with surrounding traffic flow.
2. Driver operates vehicle excessively carefully and guardedly.
3. Driver has repetitious eye contact through mirror with the following police car.
4. Passengers in vehicle continually turn around to glance at the following police car.
5. Driver begins using a car or cell phone when signaled to stop.
6. Suspicious pull-over behavior. When signaled to stop, the driver pretends not to see emergency lights or hear siren. Takes too long to pull-over; exhibits stalling or hesitant behavior, apparently to decide whether to run or not run, hide contraband, or concoct an alibi with passengers. May execute a U-turn or turn into a side street rather than pulling off to the side of the roadway.
7. Immediately after stopping, driver quickly exits vehicle and approaches the police car even before the officer can exit.

D. Vehicle Exterior Indicators:

1. Car repainted in non-standard colors on specific models and signs of repainting, especially with a different color on a new vehicle.
2. Low rear end. May indicate a heavy cargo in trunk.
3. Windows won't roll down all the way. May indicate contraband secreted in door panels.
4. License plate light inoperable or very dark, tinted plastic covering the license plate.
5. Sticker and logo inconsistencies. School ID or business parking decals, etc. on vehicle don't coincide with occupants' appearance, background, and subsequent explanations.
6. License plates don't appear to go with the vehicle, e.g. clean vehicle, dirty plates. Fingerprints or dirt marks around plate, also, dead bugs on rear license plate, indicating the plate was once used on the front of a vehicle.
7. Pulling camper between 10 PM and 7 AM—they're probably not camping. Be aware of campers with kid's bikes but no kids.
8. Heavy-duty air shocks, but no trailer hitch on the vehicle.

9. When approaching the vehicle, especially a van, following a stop, slide your hand along the rear fender to check for any vibration or movement indicative of suspects possibly hiding in the trunk or laying on the floor. Do this routinely on night stops, particularly if you noticed any suspicious or furtive movement in the passenger-area prior to the stop.

E. Vehicle Interior Indicators:

1. Look for signs of extended, uninterrupted travel and a lived-in appearance—pillows, blankets, fast food wrappers, and paper cups.
2. Observe if the rear seat is out of position or unsecured.
3. Spare tire on back floorboards or on rear seat. Also, loose tools on the floor or seat, such as pry bars, dent pullers, and car jacks.
4. Cover-up odors—using air fresheners, garlic pods, cedar shavings, mustard, or kitchen and bathroom spray deodorizers.
5. Missing or unmatched screws and fasteners from the dash, door and side panels.
6. Vehicle door and window cranks and knobs missing or laying on the floor or seats.
7. Non-manufacturer's ignition key, especially in a new car. Also, single key in ignition, no trunk key visible. This may indicate a valuable cargo in trunk.
8. Large amount of cash in vehicle which can be observed as driver searches for operator's permit and vehicle registration from wallet, glove box, purse, or luggage. Also, zip-lock money bags in plain view.
9. Maps in plain view in the vehicle that are inconsistent with the ensuing driver's explanation.
10. The Club™ anti-theft device on a rental vehicle.
11. Luggage that is inconsistent with driver and occupants' explanations. Can be too much or too little luggage considering the trip length; even no luggage is questionable on a long trip.
12. Luggage and the spare tire stored in the passenger area; be inquisitive of the trunk's contents

F. Driver and Occupant Indicators:

1. Request a criminal history and wanted check on the operator of a vehicle that appears suspicious or irregular—Always!

2. Always ask the driver to recite the information of the operator's permit and the vehicle registration back to you from memory. Don't just read it to them and ask for their confirmation.
3. If registered owner of the vehicle is not present, ask the driver for information about this individual, including a phone number. Also ask any passengers if they know the names and address of the owner.
4. Ascertain if the passengers' explanations conflict with the driver, or if the explanations sound rehearsed. Be suspicious of questions that are directed at the driver that are answered by a passenger (or vice-versa).
5. Be aware of overly nervous passengers. The usual behavior is indifference, but not undue nervousness. This can be an indicator of illegal activity.

Note: If you ask passengers to identify themselves, they have the right to refuse.

6. Note any lack of movement among passengers, i.e. staying in one body position without change. They may be trying to conceal a weapon or contraband on the seat or floor.
7. Use care when occupants of a stopped vehicle fail to follow directions or appear to make "target glances" looking for escape paths, location of secreted contraband, or ways and means to attack the officer.
8. *Look for rental vehicle irregularities i. e., inconsistencies in driver's explanation and the rental contract.*

Note: In any situation with a suspicious person, observe if the suspect conducts concealed weapon movements, such as pulling shirt down or pants up to hide a weapon in his waistband. They will use their hands, forearms and elbows to "check" on a weapon location, usually after exiting from a vehicle or getting up from a sitting position (the same way police do when in plainclothes). Look for protrusions or bulges in clothing that may indicate a weapon.

d) Tables Depicting Police Contact Information (1/1/2004-12/31/2004)

Tier 1 Data

Table 1. General Demographics of Contacts and Searches.

*Race/Ethnicity	Contacts		Searches		Consent Searches		PC for Search		Custody Arrest***	
	N	%	N	%	N	%	N	%	N	%
Caucasian	31683	19	150	22	122	24	28	17	20	17
African	4041	2	28	4	18	3	10	6	1	<1
Hispanic	125896	77	492	73	369	72	123	76	94	82
Asian	859	<1	1	<1	1	<1	0	0	0	0
Native American	20	<1	0	0	0	0	0	0	0	0
Other/Unknown**	909	<1	0	0	0	0	0	0	0	0
Total	163408	100	671	100	510	100	161	100	115	100

* Race/Ethnicity is defined by Texas CCP Article 2.132, as being of a “particular descent, including Caucasian, African, Hispanic, Asian, or Native American”.

** Other/Unknown include the following:

- Those individuals who refused to indicate their race to the officer and the officer was not able to determine the race.
- Missing or unreadable information.

*** The number of Custody Arrests reported has declined due to the increased availability of video equipment in department vehicles.

It is the policy of the El Paso Police Department that any officer found to have committed an act of racial profiling will receive the following corrective or disciplinary measures at the discretion of the Chief of Police:

- 1) Officer is retrained in racial sensitivity issues.
- 2) Officer is reprimanded, suspended or demoted and as a condition of further involvement with the police department is asked to undergo racial sensitivity training.
- 3) Officer is terminated.

e) Report on Complaints Filed Against Officers for Violating Racial Profiling Policy

The Professional Responsibility Unit reported one third-party complaint received by the El Paso Police Department during the reporting period of January 1, 2004 through December 31, 2004. The complaint, however, was deemed unfounded when the individual directly involved in the alleged incident failed to respond to the department's repeated attempts to obtain additional first-hand information and finalize a complaint.

The data presented in this report contains valuable information regarding arrests made by the police department between January 1, 2004 and December 31, 2004. Despite its value, the raw data does not present much information relevant to racial profiling trends.

f) Analysis and Interpretation of Data

The data for this report was analyzed using three different baselines for comparison purposes. The use of multiple baselines within this report is the Department's honest attempt to address philosophical disagreement among various community, regional, and national entities on how to best present this information. The first baseline is the racial/ethnic make-up of the City of El Paso. For comparison purposes, the other/unknown category was not used due to its potential to unreasonably skew the data.

*Table 1. Comparison of Self-Initiated Stops of Residents and 2000 Census Data

Race/Ethnicity	Resident Contacts		Census Data**		Variance	
	N	%	N	%	N	%
Caucasian	25056	20	103422	18		2
African	3178	3	15768	3		0
Hispanic	97165	77	431875	77		0
Asian	678	<1	5874	1		0
Native American	13	<1	1616	1		0
Total	126090	100	563662	100		

* Source: U.S. Census Bureau detailed table (P8. Hispanic or Latino by Race[17]-Universe: Total Population).

**Race/Ethnicity are defined by The Texas Code of Criminal Procedure, Article 2.132, "including Caucasian, African, Hispanic, Asian, or Native American". The U.S 2000 Census Data uses eight baselines for comparison: Hispanic or Latino, White, Black or African American, American Indian and Alaska Native, Asian, Native Hawaiian and Pacific Islander, Some Other Race and Two or More Races. These categorical differences result in 5,107 El Pasoans being included in the census total but not reflected in the racial/ethnic categories identified in Table 1.

Table 1 includes residents who do not operate a motor vehicle. In all probability, these individuals will not be stopped for a traffic violation. Consequently, the second baseline will use the Fair Roads Standard which uses Census data on vehicle availability i.e., the availability of vehicles within a household for use by its' members.

Table 2. Comparison of Self-Initiated Stops Residents and Fair Roads Standard

Race/Ethnicity	Resident Contacts		Fair Roads Data		Variance	
	N	%	N	%	N	%
Caucasian	25056	20	43821	27		-7
African	3178	3	5950	4		-1
Hispanic	97165	77	109018	68		9
Asian	678	<1	2067	1		0
Native American	13	<1	*	*		0
Total	126090	100	160856	100		

Race/Ethnicity are defined by The Texas Code of Criminal Procedure Article 2.132 as being of a "particular descent, including Caucasian, African, Hispanic, Asian, or Native American".

- This information is not available in the Fair Roads Standard Data.

The data in Table 2 includes individuals who do not operate a motor vehicle. The prevailing standard among criminal justice personnel is that the baseline should be DPS data. Information was obtained through the Texas Department of Public Safety (DPS), via a public information request. The data obtained from DPS included the race and gender of drivers in the City of El Paso during the 2004 calendar year. The decision to obtain DPS data was made since, according to experts, census data presents challenges to any effort made at establishing a fair and accurate analysis. That is, census data contains information of all residents of a particular community, regardless of the fact they may or may not be among the driving population. We believe that DPS data relevant to city residents, if compared only to the portion of individuals who reside in the city of El Paso and have come in contact with the police during a given year, will offer a more accurate representation and provide further insight than other sources, including census data.

Table 3. Comparison of Self-Initiated Stops of Residents and DPS Resident Data

Race/Ethnicity	Resident Contacts		DPS Data		Variance	
	N	%	N	%	N	%
Caucasian**	122221	97	350598	91		6
African	3178	3	14461	4		-1
Asian	678	<1	5895	2		-1
Native American	13	<1	573	<1		0
Total	126090	100	*384979	100		

Race/Ethnicity are defined by The Texas Code of Criminal Procedure Article 2.132 as being of a "particular descent, including Caucasian, African, Hispanic, Asian, or Native American".

* The total N for the DPS Data includes individuals categorized as "Other", who are not represented by a column in the Race/Ethnicity section of the table.

** In this table, Hispanics have been added to the Caucasian population. This has been done in order to correspond with DPS data collection methods. According to DPS, Hispanics are combined, in their data reports, with the Caucasian population.

IV) Summary of Findings

a) Summary Statement Regarding Findings

The El Paso Police Department does not have a problem regarding racial profiling practices. This assertion is supported by the data and the fact that the department has not received sustained complaints regarding officer misconduct associated with racial profiling practices. The continued collection of police contact data will assure an on-going evaluation of the El Paso Police Department's practices.

b) Recommendations

Based on the findings introduced in this report the department has adopted the following measures to proactively address racial profiling issues:

- Ensure that officers receive training upon return to duty.
- Continue to provide in-service training on racial profiling issues.
- Extend the training to all new officers hired by the El Paso Police Department.
- The El Paso Police Department disseminates current information to officers regarding the guidelines of behavior acceptable under the Texas Racial Profiling Law.
- The El Paso Police Department educates the public of the process to make a complaint.
- Ensure that the various citizen committees within the El Paso Police Department remain diverse so that the El Paso Police Department can maintain an awareness of citizen concerns.
- Ensure that all patrol vehicles are equipped with operational video cameras to record police-citizen contacts.

c) Check List/Contact Information

(I) The following requirements must be met by all law enforcement agencies in the State of Texas:

- ☐ Clear definitions of actions that constitute racial profiling
- ☐ Statement indicating prohibition of any peace officer employed by the El Paso Police Department from engaging in racial profiling
- ☐ Implement a process by which an individual may file a complaint regarding racial profiling violations
- ☐ Provide public education related to the complaint process
- ☐ Implement disciplinary guidelines for an officer found in violation of the Texas Racial Profiling Law
- ☐ Collect data (Tier 1) that includes information on
 - a) Race and ethnicity of individual detained
 - b) Whether a search was conducted
 - c) If there was a search, whether it was a consent search or a probable cause search
 - d) Whether a custody arrest took place
- ☐ Produce an annual report on police contacts (Tier 1) and present this to local governing body by March 1 annually.
- ☐ Adopt a policy, if video/audio equipment is installed, on standards for reviewing video and audio documentation

(II) For additional questions regarding the information presented in this report, please contact:

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